

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT

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Kenneth A. Hansen, Director

Nancy L. Lancaster, Editor

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Inquiries concerning administrative rules or other contents of the BULLETIN may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules-related information, and on-line versions of these publications, visit the division's web site at: <http://www.rules.state.ut.us/>

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SPECIAL NOTICE

DEPARTMENT OF NATURAL RESOURCES, WILDLIFE RESOURCES

NOTICE OF EMERGENCY CHANGES TO THE 1998 UTAH FISHING REGULATIONS ESTABLISHED BY THE WILDLIFE BOARD FOR TAKING FISH AND CRAYFISH

I, John Kimball, by authority granted in Section 23-14-8 of the Wildlife Resources Code of Utah, declare an emergency amendment to the 1998 Utah Fishing Regulations. The following has been amended:

Crandall Creek (Emery County) from the culvert at the end of Crandall Canyon Road, at Genwall Mine, upstream to the headwaters.

CLOSED to fishing

This amendment is effective April 23, 1998. All other rules, established in the 1998 Utah Fishing Regulations remain in effect.

UTAH DIVISION OF WILDLIFE RESOURCES
By: John Kimball, Director

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 15, 1998, 5:01 p.m., and May 1, 1998, 5:00 p.m., are included in this, the May 15, 1998, issue of the *Utah State Bulletin*.

In this publication, each PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., ~~example~~). Rules being repealed are completely struck out. A row of dots in the text (••••) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least June 15, 1998. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through September 12, 1998, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on PROPOSED RULES. *Comment may be directed to the contact person identified on the RULE ANALYSIS for each rule.*

PROPOSED RULES are governed by UTAH CODE Section 63-46a-4 (1996); and UTAH ADMINISTRATIVE CODE Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

**Alcoholic Beverage Control,
Administration
R81-1-6
Violation Schedule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21033

FILED: 04/30/98, 15:07

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To make current rule consistent with the provisions of H.B. 337 which sets penalties for certain trade practice violations, Subsection 32A-12-603(20)(j).

(DAR Note: H.B. 337 is found at 1998 Utah Laws 141, and was effective on March 14, 1998.)

SUMMARY: Trade practice violations in the alcoholic beverage industry disrupt the market place to such a degree that the penalty needs to be increased. This amendment makes the administrative penalty match the severity of the offense by increasing it from a serious violation to a grave violation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None. There should be no additional time involved in administering the violation.

❖ **LOCAL GOVERNMENTS:** None. Local governments are not involved with this program.

❖ **OTHER PERSONS:** If commission imposes a fine for a violation, the cost to the licensee would range from \$1,000 to \$25,000 and/or a 10 day license suspension up to revocation of license.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None unless a violation occurs, and in that event, the cost would range from a fine of \$1,000 to \$25,000 and/or a 10 day license suspension up to revocation of the license.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Alcoholic Beverage Control
Administration
1625 South 900 West
PO Box 30408
Salt Lake City, UT 84130-0408, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Clara Fritz or Earl Dorius at the above address, by phone at (801) 977-6800, by FAX at (801) 977-6889, or by Internet E-mail at asposupt.abcmmain.cfriz@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.**R81-1. Scope of Definitions, and General Provisions.****R81-1-6. Violation Schedule.**

(1) **Authority.** This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their employees and agents who violate statutes and commission rules relating to alcoholic beverages. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) **General Purpose.** This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) **Application of Rule.**

(a) This rule governs violations committed by all commission licensees and permittees and their employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee from holding the license. These are fundamental licensing requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63, Chapter 46b or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee to make payment on or before that date shall result in the immediate suspension of the license or permit until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to a three day suspension of the license or permit and/or up to a \$300 fine. However, if the licensee or permittee commits more than three minor violations regardless of type, the commission may suspend the license or permit for a period exceeding three days, may revoke the license or permit, and/or impose a fine not to exceed \$25,000. A record of any letter of admonishment shall be included in the licensee's or permittee's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a \$100 to \$500 fine.

(iii) Third occurrence of the same type of minor violation: one to five day suspension of the license or permit and/or a \$100 to \$500 fine.

(iv) More than three minor violations regardless of type: six day suspension to revocation and/or a fine not to exceed \$25,000.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their

respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to a 20 day suspension of the license or permit. In lieu of or in addition to a suspension, a fine ranging from \$300 to \$2000 may be assessed. However, if the licensee or permittee commits more than three moderate violations regardless of type, the commission may suspend the license or permit for a period exceeding 20 days, may revoke the license or permit, and/or impose a fine not to exceed \$25,000.

(i) First occurrence involving a moderate violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a \$1000 fine.

(ii) Second occurrence of the same type of moderate violation: three to ten day suspension of the license or permit and/or a \$500 to \$1000 fine.

(iii) Third occurrence of the same type of moderate violation: ten to 20 day suspension of the license or permit and/or a \$1000 to \$2000 fine.

(iv) More than three moderate violations regardless of type: 21 day suspension to revocation and/or a fine not to exceed \$25,000.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, ~~and involve minors[, involve unlawful exclusion of competitors' products, or involve tied house trade practices].~~ Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit. In lieu of or in addition to a suspension, a fine ranging from \$500 to \$9000 may be assessed. However, if the licensee or permittee commits more than two serious violations regardless of type, the commission shall revoke the license or permit.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and/or a \$500 to \$3000 fine.

(ii) Second occurrence of the same type of serious violation: ten to 90 day suspension of the license or permit and/or a \$1000 to \$9000 fine.

(iii) Third occurrence of any type of serious violation: revoke license or permit.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or a fine not to exceed \$25,000. However, if the licensee or permittee commits more than one grave violation regardless of type, the commission shall revoke the license and permit.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and/or a \$1000 fine to the maximum fine authorized by law.

(ii) Second occurrence of any type of grave violation: revoke license or permit.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule.

TABLE				
Violation Degree and Frequency	Warning Verbal/Written	Fine \$ Amount	Suspension No. of Days	Revoke License
Minor				
1st	X			
2nd		100 to 500		
3rd		100 to 500	1 to 5	
Over 3		to 25,000	6 to	X
Moderate				
1st	X	to 1,000		
2nd		500 to 1,000	3 to 10	
3rd		1,000 to 2,000	10 to 20	
Over 3		to 25,000	21 to	X
Serious				
1st		500 to 3,000	5 to 30	
2nd		1,000 to 9,000	10 to 90	
3rd				X

Grave	1,000 to 25,000	10 to	X
1st			X
2nd			X

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances. Examples of mitigating circumstances are: no prior violation history, good faith effort to prevent a violation, existence of written policies governing employee conduct, and extraordinary cooperation in the violation investigation that shows the licensee or permittee accepts responsibility. Examples of aggravating circumstances are: prior warnings about compliance problems, prior violation history, lack of written policies governing employee conduct, multiple violations during the course of the investigation, efforts to conceal a violation, intentional nature of the violation, the violation involved more than one patron or employee, the violation involved a minor and, if so, the age of the minor, and the violation resulted in injury or death.

(6) Violation Grid. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" and is incorporated by reference as part of this rule.

KEY: alcoholic beverages
[January 15, 1997]1998 **32A-1-107**
Notice of Continuation January 10, 1997



**Alcoholic Beverage Control,
 Administration
 R81-1-18
 Pilot Wine Tasting Program**

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 21032
 FILED: 04/30/98, 15:04
 RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To implement provisions of H.B. 337 which created a pilot program to regulate tasting of cork-finished wines.

SUMMARY: Implements statute passed in 1998 (H.B. 337) that creates a two year pilot program to allow retail licensee tastings of cork-finished wines at the administrative office of the Department of Alcoholic Beverage Control, beginning July 1, 1998, through June 30, 2000. This rule specifies procedures to implement the statutory program.
(DAR Note: H.B. 337 is found at 1998 Utah Laws 141, and was effective on March 14, 1998.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 32A-1-107, and Subsection 32A-12-603(20)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None. Subsection 32A-12-603(20)(f) requires that the pilot program be revenue neutral and self-funded by a per bottle administrative fee.

❖LOCAL GOVERNMENTS: None. Local governments are not involved in this program. It is administered by the state and the participants are state licensed wine representatives and club and restaurant licensees.

❖OTHER PERSONS: Licensees may incur travel expenses from their licensed premises to the department. Costs of travel expenses should be minimal to licensees in the Salt Lake area, but higher to licensees traveling long distances. Costs incurred by licensed wine representatives would be reimbursed by their employers as a business expense.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensed wine representatives will pay an administrative fee for each bottle of wine used in the program, and incur the cost of providing buckets, glasses, openers, napkins, and food, for the tasting sessions.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Alcoholic Beverage Control
Administration
1625 South 900 West
PO Box 30408
Salt Lake City, UT 84130, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Clara Fritz or Earl Dorius at the above address, by phone at (801) 977-6800, by FAX at (801) 977-6889, or by Internet E-mail at asposupt.abcmmain.cfritz@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope of Definitions, and General provisions.
R81-1-18. Pilot Wine Tasting Program.

(1) Purpose. To implement and operate a pilot program by which local industry representatives may conduct retail licensee tastings of cork-finished wines at the department's administrative office complex.

(2) Authority. The authority for this rule is Section 32A-12-603(20) of the Alcoholic Beverage Control Act.

(3) Definitions.

(a) "Local industry representative" or "representative" means an individual, corporation, partnership, or limited liability company licensed by the commission under Section 32A-8-501 to represent

cork-finished wine products of a manufacturer, supplier, or importer with the department, package agencies, licensees and permittees in this state, or any of the representative's employees.

(b) "Retailer" means the holder of a private club or restaurant liquor license issued by the commission under Chapters 32A-4 and 32A-5, or any of the club's or restaurant's employees.

(c) "DABC" means the Department of Alcoholic Beverage Control.

(4) Check-out procedures.

(a) All cork-finished wines used in this program shall be checked out by a local industry representative from the department's club and restaurant store located at 1675 South 900 West, Salt Lake City, Utah.

(b) The wines shall be checked out during the store's regular business hours, excluding any recognized state or federal holiday, and the day preceding the holiday. The representative shall allow at least 24 hours from the time the order is placed until the wine is checked out

(c) At the time of check-out, each representative shall sign a purchase form which shall include the representative's DABC license number, a list of the wines checked out, and a statement that the wines will be used only for tasting sessions conducted under this program. The form shall be in triplicate: one shall remain at the club and restaurant store; one shall accompany the wines when the representative checks them in at the tasting session; and one shall be the representative's receipt.

(d) Store personnel shall affix a bright colored label to each wine bottle which reads "Retailer Sample" to identify it for use in the pilot wine tasting program.

(e) Each representative shall pay full retail price (including markup and taxes) for each bottle of wine checked out.

(5) Special order and transfer procedures.

(a) Wines used in this program shall be products listed by the department or special ordered by the representative in accordance with department policy P96-03-04.

(b) No wines shall be transferred from other state liquor stores, but may be transferred from stock available in the central administrative warehouse, including special orders.

(6) Procedures for tasting sessions.

(a) All tasting sessions under this program shall be done in the department's administrative office building in rooms designated by the department.

(b) Sessions shall be held at least on a weekly basis on days and at times designated by the department.

(c) Representatives shall schedule a tasting session with the department at least one week in advance.

(d) Tasting sessions may be attended by representatives and their employees, manufacturers, suppliers, and importers; retailers and their employees; and supervisory staff of the department.

(e) The department may put a reasonable maximum limit on the total number of attendees.

(f) All persons attending the tasting other than department staff must sign an attendance form. Representatives and their employees, and retailers and their employees shall also enter their DABC license number on the form.

(g) The representative is responsible for transporting to the tasting session all wines checked out from the club and restaurant store. All wines checked out must be checked in to the department within seven (7) calendar days. The wines must be returned as a

group and not piecemeal. The representative shall present a copy of the purchase form and pay the administrative per bottle fee set by the commission before participating in the session.

(h) Once the wines are brought to the session, they shall be checked in by the department, and may not leave the premises of the department's administrative office building except for disposition by the department. The department shall store wines for representatives for use at future tasting sessions, but not more than seven days from the date of purchase. The department shall maintain a record of each bottle returned.

(i) The department shall provide tables for the tasting sessions.

(j) The representatives shall provide their own buckets, glasses, openers, napkins, and food for the tasting sessions.

(k) Participants shall follow accepted protocol for wine tasting, and may not consume the wine.

(l) Any tasting session is subject to video taping at the discretion of the department. No audio taping shall be done.

(m) The representatives are responsible for dumping buckets and unused portions of wine, and cleaning up the tasting area at the conclusion of each tasting session.

(n) The department shall dispose of the wine as provided in Section 32A-12-603(3)(j) or -603(6).

(7) Administrative fee. In addition to the full retail price, the commission shall set an administrative fee for each bottle purchased under this program, and may periodically review the fee to ensure that it is sufficient to defray the department's actual, ordinary, and necessary costs directly incurred in administering this program.

(8) Penalties for Non-Compliance. Any representative or retail licensee who engages or participates in any promotional tasting of wines at any location in the state other than as allowed under this program shall have their license suspended or revoked.

(9) Report to Legislature. The commission shall prepare a report of the program and file it with the Legislature before November 1, 1999.

(10) Duration of program. This program shall be in effect from July 1, 1998.

KEY: alcoholic beverages

[January 15, 1997]1998

32A-1-107

Notice of Continuation January 10, 1997



Commerce, Occupational and Professional Licensing
R156-31
Nurse Practice Act Rules

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 21029
FILED: 04/30/98, 10:39
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The 1998 Legislature passed H.B. 351 which repealed the existing Nurse Practice Act, Title 58, Chapter 31, and enacted a new Nurse Practice Act, Title 58, Chapter 31b.

(DAR Note: H.B. 351 is found at 1998 Utah Laws 288, and will be effective July 1, 1998.)

SUMMARY: This rule is repealed in its entirety.

(DAR Note: The proposed new rule for R156-31b, which is replacing this rule, is under DAR No. 21030 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 58-31-4, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None - The Division has determined that there are no cost or savings impact as a result of rules being repealed. Any costs or savings impact are identified in the rule filing for R156-31b.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Laura Poe at the above address, by phone at (801) 530-6789, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.lpoe@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 05/29/98, 2:00 p.m., Room 4A, 160 East 300 South, Salt Lake City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: J. Craig Jackson, Director

{DAR Note: Because of publication constraints, the text of this rule is not printed in this *Bulletin*, but is published by reference to a copy on file at the Division of Administrative Rules. The text may also be inspected at the agency (address above) or in the *Utah Administrative Code* which is available at any state depository library.}



Commerce, Occupational and
Professional Licensing
R156-31b
Nurse Practice Act Rules

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21030

FILED: 04/30/98, 10:39

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The 1998 Legislature passed H.B. 351 which repealed the existing Nurse Practice Act, Title 58, Chapter 31, and enacted a new Nurse Practice Act, Title 58, Chapter 31b. New rules are being proposed to clarify provisions in Title 58, Chapter 31b. (**DAR Note:** H.B. 351 is found at 1998 Utah Laws 288, and will be effective July 1, 1998.)

SUMMARY: The proposed rules define various terms used in the statute and the rules; the Advanced Practice Advisory Peer Committee is established to review advanced practice registered nurse (APRN) applications and advise regarding practice issues; a schedule to review APRN controlled substance prescribing practices is established; education, experience and examination requirements for licensure are clarified; continuing competency for renewal of licensure is defined, the criteria for approval of APRN quality review programs are established; further establishes the requirements for reactivation and reinstatement of licensure; establishes the expiration date of an intern license; establishes a fee schedule for administrative penalties; further defines unprofessional conduct; establishes the standards for nursing education program approval and defines the types of approval which may be granted; clarifies the role of the nurse when delegating tasks and provides guidelines for lawful delegation; and provides further clarification of the scope of practice of registered nurses (RNs) employed by the department of health and APRNs. (**DAR Note:** The proposed repeal to R156-31 is under DAR No. 21029 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 58-31b-101, and Subsections 58-1-106(1) and 58-1-202(1)

THIS FILING INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: "State-Approved Schools of Nursing RN", 1997 and "State-Approved Schools of Nursing PN", 1997, published by the National League of Nursing Accrediting Commission (NLNAC). "Scope and Standards of Advanced Practice Registered Nursing", 1996, published by the American Nurses Association. "Model Nursing Administrative Rules", 1994, published by the National Council of State Boards of Nursing. "Standards of Clinical Nursing Practice", 1991, published by the American Nurses Association. "Implementing a Quality Assurance Plan Program in

Anesthesia Departments, an Action Plan of the Council on Nurse Anesthesia Practice". "Criteria and Guidelines for the Evaluation of Practical Nursing Programs", 1996, published by the NLNAC. "Criteria and Guidelines for the Evaluation of Associate Degree Programs in Nursing", 1996, published by the NLNAC. "Criteria and Guidelines for the Evaluation of Baccalaureate and Higher Degree Programs in Nursing", 1996, published by the NLNAC. "Standards of Accreditation of Baccalaureate and Graduate Nursing Education Programs", published by the Commission on Collegiate Nursing Education (CCNE).

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Nursing education programs will now be required to be accredited by national nursing education accrediting bodies. Those nursing programs which are not accredited will incur costs of approximately \$4,900 to obtain the national accreditation. There are at least six nursing programs in Utah that will be affected.

❖LOCAL GOVERNMENTS: The elimination of second licensure for prescribing and eliminating the mandate for a consulting physician (except when prescribing Schedule II-III controlled substances) will decrease the costs associated with licensure of APRNs. A savings of \$60 (initial licensure fee) and \$40 (renewal fee-every 2 years) per APRN with a prescriptive practice license will be realized along with an unknown amount of savings for possible consulting physician fees. These fees would only be saved by the local government if the local government entity was paying for licensure fees of APRNs, otherwise the savings would just be realized by the individual licensee.

❖OTHER PERSONS: APRNs will have a savings of \$60 in initial licensing fees and a savings of \$40 in renewal fees every two years as a result of the changes made with prescriptive practice. Some practical nursing programs will see an increase in cost of approximately \$4,900 as a result of needing to be nationally accredited. Individual licensees and employers will experience a decrease in cost for the licensure process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Practical nursing education programs which are not nationally accredited will experience compliance costs of approximately \$4,900 to obtain national accreditation. The compliance costs for licensees will be neutral overall, APRNs who choose to prescribe medications may see a savings in compliance costs.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
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THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rules.
R156-31b-101. Title.

These rules are known as the "Nurse Practice Act Rules".

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in these rules:

- (1) "APRN" means an advanced practice registered nurse.
- (2) "Approved continuing education" in Subsection R156-31b-303(3) means:
 - (a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education; and
 - (b) nursing education courses taken from an approved education program as defined in Section R156-31b-601.
- (3) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program published in the documents entitled "State-Approved Schools of Nursing RN", 1997, and "State-Approved Schools of Nursing PN", 1997, published by the National League for Nursing Accrediting Commission, which are hereby adopted and incorporated by reference as a part of these rules.
- (4) "CCNE" means the Commission on Collegiate Nursing Education.
- (5) "Contact hour" means 50 minutes.
- (6) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.
- (7) "CRNA" means a certified registered nurse anesthetist.
- (8) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.
- (9) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:
 - (a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or
 - (b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to administering or prescribing a prescription drug.
- (10) "Generally recognized scope and standards of advanced practice registered nursing" means the scope and standards of practice set forth in the "Scope and Standards of Advanced Practice Registered Nursing", 1996, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.
- (11) "Generally recognized scope of practice of licensed practical nurses" means the scope of practice set forth in the "Model

Nursing Administrative Rules", 1994, published by the National Council of State Boards of Nursing, which is hereby adopted and incorporated by reference, or as established by the professional community.

(12) "Generally recognized scope of practice of registered nurses" means the scope of practice set forth in the "Standards of Clinical Nursing Practice", 1991, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(13) "Licensure by equivalency" as used in these rules means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Section R156-31b-601.

(14) "LPN" means a licensed practical nurse.

(15) "NLNAC" means the National League for Nursing Accrediting Commission.

(16) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(17) "Non-approved education program" means any foreign nurse education program.

(18) "Other specified health care professionals", as used in Subsection 58-31b-102(12), who may direct the licensed practical nurse means:

- (a) advanced practice registered nurse;
- (b) certified nurse midwife;
- (c) chiropractic physician;
- (d) dentist;
- (e) osteopathic physician;
- (f) physician assistant;
- (g) podiatric physician; and
- (h) optometrist.

(19) "RN" means a registered nurse.

(20) "Supervision" in Section R156-31-701 means the provision of guidance or direction, evaluation and follow up by the licensed nurse for accomplishment of a task delegated to unlicensed assistive personnel or other licensed individuals.

(21) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 31b.

R156-31b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-31b-201. Advisory Peer Committees Created - Membership - Duties.

There is created in accordance with Subsection 58-1-203(6) and Section 58-31b-202(2), the Advanced Practice Advisory Peer Committee whose duties and responsibilities include reviewing APRN applications and advising regarding practice issues.

R156-31b-202. Prescriptive Practice Peer Committee Audits.

In accordance with Subsection 58-31b-202(1)(b)(ii), the Prescriptive Practice Peer Committee shall audit and review the prescribing records of APRNs by reviewing the controlled

substance data bank. The prescribing records of five percent of APRNs with a controlled substance license will be reviewed on a quarterly basis.

R156-31b-301. License Classifications - Professional Upgrade.

Upon issuance and receipt of an increased scope of practice license, the increased licensure supersedes the lesser license which shall automatically expire and must be immediately destroyed by the licensee.

R156-31b-302a. Qualifications for Licensure - Education Requirements.

In accordance with Sections 58-31b-302 and 58-31b-303, the education requirements for licensure are defined as follows:

(1) Applicants for licensure by equivalency shall submit written verification from an approved registered nurse education program, verifying the applicant is currently enrolled and has completed course work which is equivalent to the course work of an NLNAC accredited practical nurse program.

(2) Applicants from foreign education programs shall submit a credentials evaluation report from one of the following credentialing services which verifies that the program completed by the applicant is equivalent to an approved practical nurse or registered nurse education program.

- (a) Commission on Graduates of Foreign Nursing Schools;
- (b) Foundation for International Services, Inc; or
- (c) International Consultants of Delaware, Inc.

R156-31b-302b. Qualifications for Licensure - Experience Requirements for APRNs Specializing as Psychiatric Mental Health Nurse Specialists.

In accordance with Subsection 58-31b-302(3)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall:

(1) be a minimum of 4,000 hours, including 1,000 hours of mental health therapy and one hour of face to face supervision for every 20 hours of mental health therapy services provided;

(a) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing. The remaining 3,000 hours shall:

(i) be completed while an employee, unless otherwise approved by the board and division, under the supervision of an approved supervisor; and

(ii) be completed under a program of supervision by a supervisor who meets the requirements under Subsection (3). At least 2,000 hours must be under the supervision of an APRN specializing as a psychiatric mental health nurse specialist.

(2) An applicant who has obtained all or part of the clinical practice hours outside of the state, may receive credit for that experience if it is demonstrated by the applicant that the training completed is equivalent to and in all respects meets the requirements under this section.

(3) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(4) Duties and responsibilities of a supervisor include:

(a) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(b) supervising not more than three supervisees unless otherwise approved by the division in collaboration with the board; and

(c) submitting appropriate documentation to the division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(5) An applicant for licensure by endorsement as an APRN specializing as a psychiatric mental health nurse specialist under the provisions of Section 58-1-302 shall demonstrate compliance with the clinical practice in psychiatric and mental health nursing requirement under Subsection 58-31b-302(3)(g) by demonstrating that the applicant has successfully engaged in active practice as a psychiatric mental health nurse specialist for not less than 4,000 hours in the three years immediately preceding the application for licensure.

R156-31b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(i) Candidates who fail to pass the NCLEX licensing examination within two years following completion of their educational program shall be required to submit a plan of action for approval by the division in collaboration with the board before being allowed to sit for additional examinations.

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with his educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

- (A) Adult Nurse Practitioner;
- (B) Family Nurse Practitioner;
- (C) School Nurse Practitioner;
- (D) Pediatric Nurse Practitioner;
- (E) Gerontological Nurse Practitioner;
- (F) Acute Care Nurse Practitioner;
- (G) Clinical Specialist in Medical-Surgical Nursing;
- (H) Clinical Specialist in Gerontological Nursing;
- (I) Clinical Specialist in Community Health Nursing;
- (J) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(K) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing;

(ii) National Certification Board of Pediatric Nurse Practitioners and Nurses;

(iii) American Academy of Nurse Practitioners; and

(iv) The National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties.

(c) An applicant for licensure as a CRNA shall pass the examination of the Council on Certification of the American Association of Nurse Anesthetists.

(2) In accordance with Section 58-31b-303, the examination requirements for graduates of nonapproved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(i) Candidates who fail to pass the NCLEX licensing examination within two years following initial application for licensure shall be required to submit, for approval by the division in collaboration with the board, a plan of action detailing steps to be taken by the applicant to prepare to retake the examination, before being allowed to sit for additional examinations.

(b) If an applicant for licensure as an RN cannot document satisfactory practice for 4,000 hours in an approved jurisdiction, the applicant shall also pass the CGFNS examination.

R156-31b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

(3) Each applicant for renewal shall comply with the following continuing competence requirements:

(a) An LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education;
or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall complete the following:

(i) be currently certified or recertified in their specialty area of practice; and

(ii) actively participate in a quality review program defined in Section R156-31b-304.

(c) A CRNA shall complete the following:

(i) be currently certified or recertified as a CRNA; and

(ii) produce evidence of continuing participation in an anesthesia quality assurance program which meets the criteria set forth in the document "Implementing a Quality Assurance Program in Anesthesia Departments, an Action Plan of the Council on Nurse Anesthesia Practice", which is hereby adopted and incorporated by reference.

R156-31b-304. Quality Review Program.

In accordance with Subsection 58-31b-305(3)(b), quality review programs must meet the following criteria for division approval.

(1) The program shall consist of a program provider (provider), program staff, and APRNs, and shall be under the direction of the quality review provider.

(2) The provider shall clearly demonstrate that its personnel have the knowledge and expertise in the practice of advanced practice registered nursing and quality review to permit the provider to competently conduct a quality review program.

(3) The review process shall be conducted on a regular, systematic basis.

(4) A quality review program shall provide in its agreement between the provider and the licensee that:

(a) Upon a finding of gross incompetence, gross negligence, or a pattern of incompetence or negligence, the provider shall submit its findings to the division for appropriate action.

(b) If the licensee fails to substantially comply with a corrective action plan determined appropriate by the provider after a negative review by the provider, said failure shall be reported to the division for appropriate action.

(c) The provider shall make available to the division the results of a quality review upon the proper issuance of a subpoena by the division.

R156-31b-306. Inactive Licensure.

(1) A licensee may apply for inactive licensure status in accordance with Sections 58-1-305 and R156-1-305.

(2) To reactivate a license which has been inactive for five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(3) To reactivate a license which has been inactive for more than five years, the licensee must document active licensure in another state or jurisdiction or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reactivate a license.

R156-31b-307. Reinstatement of Licensure.

In addition to Section 58-1-308 and Subsections R156-1-308(e), (f), (g), (h) and (i), an applicant for reinstatement of licensure shall meet the following:

(1) To reinstate a license which has been expired for five years or less, the applicant must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(2) To reinstate a license which has been expired for more than five years, the applicant must document active licensure in another state or jurisdiction or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reinstate a license.

R156-31b-309. Intern Licensure.

(1) In accordance with Section 58-31b-306, an intern license shall expire:

(a) immediately upon failing to take the first available examination;

(b) 30 days after notification, if the applicant fails the first available examination; or

(c) upon issuance of an APRN license.

(2) Regardless of the provisions of Subsection (1) of this section, the division in collaboration with the board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

R156-31b-401. Disciplinary Proceedings.

(1) An individual licensed as an LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.

(2) A nurse whose license is suspended under Subsection 58-31b-401(2)(d) may petition the division at any time that he can demonstrate that he can resume the competent practice of nursing.

R156-31b-402. Administrative Penalties.

In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

- (1) Using a protected title:
initial offense: \$100 - \$300
subsequent offense(s): \$250 - \$500
- (2) Using any title that would cause a reasonable person to believe the user is licensed under this chapter:
initial offense: \$50 - \$250
subsequent offense(s): \$200 - \$500
- (3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without board approval:
initial offense: \$1,000 - \$3,000
subsequent offense(s): \$5,000 - \$10,000
- (4) Practicing or attempting to practice nursing without a license or with a restricted license:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (5) Impersonating a licensee or practicing under a false name:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (6) Knowingly employing an unlicensed person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000
- (7) Knowingly permitting the use of a license by another person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000
- (8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (9) violating or aiding or abetting any other person to violate any statute, rule, or order regulating nursing:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (10) violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (11) Engaging in conduct that results in convictions or, or a plea of nolo contendere to a crime of moral turpitude or other crime:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a nurse:

- initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (14) Practicing or attempting to practice as a nurse when physically or mentally unfit to do so:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (15) Practicing or attempting to practice as a nurse through gross incompetence, gross negligence, or a pattern of incompetency or negligence:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (16) Practicing or attempting to practice as a nurse by any form of action or communication which is false, misleading, deceptive, or fraudulent:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (17) Practicing or attempting to practice as a nurse beyond the individual's scope of competency, abilities, or education:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (18) Practicing or attempting to practice as a nurse beyond the scope of licensure:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (20) Failure to safeguard a patient's right to privacy:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (22) Engaging in sexual relations with a patient:
initial offense: \$5,000 - \$10,000
subsequent offense(s): \$10,000
- (23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:
initial offense: \$200 - \$1,000
subsequent offense(s): \$500 - \$2,000
- (24) Unauthorized taking or personal use of nursing supplies from an employer:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000
- (25) Unauthorized taking or personal use of a patient's personal property:
initial offense: \$200 - \$1,000
subsequent offense(s): \$500 - \$2,000
- (26) Knowingly entering false or misleading information into a medical record or altering a medical record:
initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(27) Unlawful or inappropriate delegation of nursing care:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(28) Failure to exercise appropriate supervision:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(30) Failure to file or impeding the filing of required reports:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(31) Breach of confidentiality:

initial offense: \$200 - \$1,000

subsequent offense(s): \$500 - \$2,000

(32) Failure to pay a penalty:

Double the original penalty amount up to \$10,000

(33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:

initial offense: \$500 - \$1,000

subsequent offense(s): \$500 - \$2,000

(34) Failure to confine practice within the limits of competency:

initial offense: \$500 - \$1,000

subsequent offense(s): \$500 - \$2,000

(35) Any other conduct which constitutes unprofessional or unlawful conduct:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

R156-31b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;

(2) an RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17a-620, or as may be otherwise provided by law;

(3) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(a) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;

(b) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;

(c) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs.

R156-31b-601. Nursing Education Program Standards.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter, which are hereby adopted and incorporated by reference, are respectively:

(1) the "Criteria and Guidelines for the Evaluation of Practical Nursing Programs", 1996, published by the NLNAC.

(2) the "Criteria and Guidelines for the Evaluation of Associate Degree Programs in Nursing", 1996, published by the NLNAC.

(3) the "Criteria and Guidelines for the Evaluation of Baccalaureate and Higher Degree Programs in Nursing", 1996, published by the NLNAC, or the "Standards of Accreditation of Baccalaureate and Graduate Nursing Education Programs", published by the CCNE.

R156-31b-602. Nursing Education Program Full Approval.

(1) Full approval of a nursing program shall be granted when it becomes accredited by the NLNAC or the CCNE.

(2) Programs which have been granted full approval as of the effective date of these rules and are not accredited, must become accredited within five years or be placed on probationary status.

R156-31b-603. Nursing Education Program Provisional Approval.

(1) The division may grant provisional approval to a nursing education program for a period not to exceed three years after the date of the first graduating class, provided the program:

(a) is located or available within the state;

(b) is newly organized;

(c) meets all standards for approval except accreditation; and
(d) is progressing in a reasonable manner to qualify for full approval by obtaining accreditation.

(2) Programs which have been granted provisional approval as of the effective date of these rules and are not accredited, must become accredited within five years.

R156-31b-604. Nursing Education Program Probationary Approval.

(1) The division may place on probationary approval status a nursing education program for a period not to exceed three years provided the program:

(a) is located or available within the state;

(b) is found to be out of compliance with the standards for full approval to the extent that the ability of the program to competently educate nursing students is impaired; and

(c) provides a plan of correction which is reasonable and includes an adequate safeguard of the student and public.

(2) The division may place on probationary approval status a program which implements an outreach program or satellite program without prior approval of the board.

(3) Programs which have been granted probationary approval as of the effective date of these rules and are not accredited, must become accredited within five years or be discontinued.

R156-31b-605. Nursing Education Program Notification of Change.

(1) A nursing education program wishing to begin a new program or to extend or expand existing programs shall submit an application to the division for approval at least one year prior to the implementation of the program.

(2) An approved program that expands onto a satellite campus or implements an outreach program shall submit an application to

expand to the division for approval at least one year prior to the expansion. Programs who fail to notify the division of expansion plans may be placed on probationary approval status.

R156-31b-606. Nursing Education Program Surveys.

The division may conduct a survey of nursing education programs to monitor compliance with these rules.

R156-31b-701. Delegation of Nursing Tasks.

In accordance with Subsection 58-31b-102(10)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;

(b) perform a nursing assessment;

(c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;

(d) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(e) provide instruction and direction necessary to safely perform the specific task; and

(f) provide ongoing supervision and evaluation of the delegatee who is performing the task.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient/client;

(ii) the training and capability of the delegatee;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's/client's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

R156-31b-702. Scope of Practice.

(1) The lawful scope of practice for an RN employed by a department of health shall include implementation of standing orders and protocols, and completion and providing to a patient of prescriptions which have been prepared and signed by a physician in accordance with the provisions of Section 58-17a-620.

(2) An APRN who chooses to change or expand from a primary focus of practice must be able to document competency within that expanded practice based on education, experience and certification. The burden to demonstrate competency rests upon the licensee.

KEY: licensing, nurses
1998

58-31b-101
58-1-106(1)
58-1-202(1)



Commerce, Occupational and
Professional Licensing
R156-38
Residence Lien Restriction and Lien
Recovery Fund Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21019

FILED: 04/28/98, 09:01

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Changes to the rules are being proposed as a result of amendments made to the Residence Lien Restriction and Lien Recovery Fund Act, Title 38, Chapter 11, during the 1998 legislative session (HB 219). To further clarify portions of the Act and rules and to simplify requirements for recovering from the Lien Recovery Fund. (**DAR Note:** H.B. 219 is found at 1998 Utah Laws 49, and will be effective July 1, 1998.)

SUMMARY: (1) Clarify the definition of "owner" to exclude developers; (2) allow permissive parties to claims a reasonable time to respond to claim filings; (3) implement

new legislative requirement of homeowner rights notification in mechanic's lien filings; (4) eliminate building permit and owner-occupied residence affidavit documentation requirements for qualified beneficiary claim filings; (5) allow trier of fact to find for claimant on obviously uncontroverted issues even if the issue is incompletely documented per the administrative rules; and (6) clarify claim filing fee requirements for qualified beneficiary and laborer claims.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 38-11-101, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Elimination and relaxation of documentation requirements should result in shorter processing times for qualified beneficiary claims, and a consequent reduction in administrative costs. These changes should also result in more claims against the fund being payable, resulting in more payments being made from the fund. Clarification of fee payment requirements should result in no change in revenue for qualified beneficiary claims and in slightly reduced revenue from laborer claims. The other changes should not affect processing times or revenues so should not affect the state budget.

❖LOCAL GOVERNMENTS: The elimination of the building permit requirement may result in fewer homeowner and claimant inquiries for building permits, possibly resulting in slightly reduced costs for local government.

❖OTHER PERSONS: (1) Persons who file mechanic's liens will be required to amend their standard lien forms to include the homeowner rights notification language. This will initially result in higher costs as the old forms are replaced and phased out, but should have no significant long term financial impact. (2) The elimination and relaxation of documentation requirements for qualified beneficiary claims should result in lower costs and attorney fees incurred in preparing claims for filing and a greater likelihood of successfully recovering from the fund, thereby reducing costs and increasing benefits to claimants. (3) Simplification of fee and filing requirements for laborer claims should result in significant cost savings for laborers filing multiple claims. (4) No other changes should have a financial impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs involved in amending and/or replacing mechanic's lien forms. The exact amount of these costs is unknown. There are no other compliance costs involved.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Linda Barclay at the above address, by phone at (801) 530-6208, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.lbarclay@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 05/20/98, 9:00 a.m., Room 427, 160 East 300 South, Salt Lake City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing. R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.

R156-38-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to these rules, as used in these rules:

(1) "Claimant" means a person who submits an application or claim for payment from the fund.

(2) "Necessary party" includes the division, on behalf of the fund, and the claimant.

(3) "Owner", as defined in Section 38-11-102(12), does not include any person or developer who builds residences which are offered for sale to the public.

(3) "Permissive party" includes a licensee or qualified beneficiary who will be required to reimburse the fund if a claimant's claim is paid from the fund.

R156-38-105. Adjudicative Proceedings.

(1) The classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or these rules.

(5) Claims shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim against the fund within 30 days of notification by the division of the filing of the claim [after the filing of the claim], to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim.

(8) The findings of fact and conclusions of law established by a judgment entered by a civil court or a final order entered by an administrative agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

R156-38-108. Notification of Rights under Title 38, Chapter 11.

(1) A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and owner and in every notice of claim filed under Section 38-1-7 against the owner of an owner-occupied residence or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION.

Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner [must] entered into a written contract with either a real estate developer or an original contractor [an "original contractor" who is properly licensed or exempt from licensure, or with a "real estate developer";

(2) [required building permits must have been obtained] the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner [must pay] paid in full the original contractor or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."

R156-38-204a. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the written contract:

(i) between the owner of the owner-occupied residence or the owner's agent and the original contractor for the performance of qualified services, to obtain the performance of qualified services

by others, or for the supervision of the performance by others of qualified services in construction on the residence; or

(ii) between the owner of the owner-occupied residence or the owner's agent and the real estate developer for the purchase of an owner-occupied residence; or

(b) a copy of a civil judgment containing a finding that the owner of the owner-occupied residence entered into a written contract in compliance the requirements of Subsection 38-11-204(3)(a);

[~~(2) one of the following:~~

~~(a) a copy of the building permit issued by the local jurisdiction in which the residence is located; or~~

~~(b) a letter from the local jurisdiction indicating that a building permit was not required;]~~

([3]2) if the claim involves an original contractor, documentation that the original contractor is licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

([4]3) one of the following:

(a) an affidavit from the original contractor or real estate developer acknowledging that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract;

(b) a copy of a civil judgment containing a finding that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract; or

(c) documentation that the claimant has been prevented from satisfying Subsections (a) and (b), together with independent evidence establishing that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract;

([5]4) one or more of the following as required:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against an original contractor, subcontractor or real estate developer described in Subsection 38-11-204(3)(c) to recover monies owed for qualified services performed, filed within 180 days from the date the claimant last provided qualified services; and

(b) a copy of the Notice of Commencement of Action filed with the division [within 30 days from the date the claimant filed the action against the original contractor, subcontractor or real estate developer to recover monies owed for qualified services performed]; or

(c) documentation that a bankruptcy filing by the original contractor, subcontractor or real estate developer prevented claimant from satisfying Subsections (a) and (b);

([6]5) one of the following:

(a) a copy of a civil judgment entered in favor of claimant against the original contractor, subcontractor or real estate developer containing a finding that the original contractor, subcontractor or real estate developer failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract; or

(b) documentation that a bankruptcy filing by the original contractor, subcontractor or real estate developer prevented the

claimant from obtaining such a civil judgment, together with independent evidence establishing that the original contractor, subcontractor or real estate developer failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract;

(7) one or more of the following as required:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of claimant;

(b) a copy of the return of service of the supplemental order indicating either that service was accomplished on the original contractor, subcontractor or real estate developer or that said contractor or developer could not be located or served;

(c) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; and

(d) a return of execution of any writ of execution; or

(e) documentation that a bankruptcy filing or other action by the original contractor or real estate developer prevented the claimant from satisfying Subparagraphs (a) through (d);

(8) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

~~(9) one of the following:~~

~~(a) an affidavit from the owner establishing that the owner is an owner as defined in Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13);~~

~~(b) a copy of a civil judgment containing a finding that the owner is an owner as defined by Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13); or~~

~~(c) documentation that the claimant has been prevented from satisfying Subsections (a) and (b), together with independent evidence establishing that the owner is an owner as defined by Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13).]~~

(8) Certification that the homeowner is an owner as defined in Subsection 38-11-102(12) or subsequent owner as defined in Subsection 38-11-102(18), that the residence is an owner-occupied residence as defined in Subsection 38-11-102(13), and that the residence is a detached single family or duplex residence as defined in Subsection 38-11-102(17).

(9) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(10) A separate claim must be filed for each residence, and a separate filing fee must be paid for each claim.

R156-38-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Industrial Commission of the Utah Labor Division for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Industrial Commission of Utah Labor Division containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer.

(2) When a laborer makes claim on multiple residences as a result of a single incident of non-payment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(5), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

KEY: licensing, contractors, liens

~~August 15, 1997~~1998

38-11-101

58-1-106(1)

58-1-202(1)



Commerce, Occupational and Professional Licensing

R156-60b

Marriage and Family Therapist Licensing Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21007

FILED: 04/21/98, 15:19

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Changes to the rules are being proposed as a result of amendments made to the Mental Health Professional Practice Act, Title 58, Chapter 60, Part I during the 1998 legislative session (H.B. 441).

(DAR Note: H.B. 441 is found at 1998 Utah Laws 311, and was effective May 4, 1998.)

SUMMARY: Added definitions for "earned a masters or doctoral degree in a discipline which is a prerequisite for licensure under this chapter" and "temporary certificate". Defined the prerequisite education requirements for the issuance of a temporary certificate or license for a marriage and family therapist-temporary. Eliminates the term "trainee" and replaces it with "marriage and family therapist-temporary." Deletes the section on "endorsement" (Section R156-60b-302c) which is no longer necessary with the statute change. Renumbered the remaining sections in Section R156-60b-302. Changed two year period commencement date with respect to continuing education from "January 1st" to "September 30th."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 58-60-301, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Some cost savings to the Division in that less resources will be needed to process endorsement applications.

❖LOCAL GOVERNMENTS: The Division is unaware of any local government which hires marriage and family therapists; therefore, no effect on local governments.

❖OTHER PERSONS: Employers of marriage and family therapist-temporary licensees: Higher cost to obtain temporary license of \$50 rather than a trainee registration of \$10. However, the costs may be offset by the decreased cost and ability to immediately license an individual licensed in another state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Those who are applying for a marriage and family therapist-temporary will pay \$40 more. Those applying for licensure as a professional counselor by endorsement may save money because they don't have to take any core course work or the national examination.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Laura Poe at the above address, by phone at (801) 530-6789, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.poe@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing. R156-60b. Marriage and Family Therapist Licensing Act Rules. R156-60b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Candidacy status by the COAMFTE" means that an education program leading to an earned master's or doctor's degree in marriage and family therapy has been formally recognized by COAMFTE as a candidate for accreditation.

(3) "COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

(4) "Earned a masters or doctoral degree in a discipline which is a prerequisite for licensure under this chapter", as used in Subsection 58-60-116(1)(b), means completion of the education requirements set forth in Subsections 58-60-305(4) and R156-60b-302a(2).

([#]5) "Face to face supervision", as used in Subsection 58-60-305(6), means one to one supervision between the supervisor and the supervisee or group supervision between the supervisor and up to two supervisees. During group supervision, one and a half hours is equivalent to one clock hour of supervision.

(6) "Temporary certificate", as used in Section 58-60-116, means a temporary license issued by the division to practice as a marriage and family therapist-temporary under the supervision of an approved supervisor in accordance with Section 58-60-116 and Sections R156-60b-302b and R156-60b-302d.

([5]7) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60b-502.

R156-60b-302b. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-60-305(5) and (6), each individual entering into supervised marriage and family therapy training and mental health therapy training under an approved supervisor shall obtain a license as a marriage and family therapist-temporary under Section 58-60-116~~[approval of the supervisor by filing an application for approval of training supervisor with the division. The division shall notify the applicant in writing whether the supervisor is approved or approval is denied]~~.

(2) A change in supervisor must be submitted to the Division on forms prescribed by the Division~~[preceded by a new application and approval in accordance with the provisions of Subsection (1)]~~.

(3) Marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours qualifying an applicant for licensure as a marriage and family therapist under Subsections 58-60-305(5) and (6), to be approved by the division in collaboration with the board, shall:

(a) be completed in not less than two years ~~and in not more than four years, unless otherwise approved by the board and division~~;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under a program of supervision by a marriage and family therapist meeting the requirements under Sections R156-60b-302(e) and R156-60b-302(f);

(d) in accordance with Subsection 58-60-305(6), include a minimum of 500 hours in conjoint, couple or family therapy; and

(e) hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(4) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements under Subsection (3) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(5) and (6), and Subsection R156-60b-302b(3). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

~~**R156-60b-302c. Qualifications for Licensure by Endorsement - Training Equivalence.**~~

~~In accordance with Section 58-1-302, the equivalent experience requirement for licensure by endorsement shall be satisfied if the applicant has engaged in practice as a licensed marriage and family therapist for not less than two years (4000 hours) immediately preceding the date of the application.~~

R156-60b-302c[d]. Qualifications for Licensure - Examination Requirements.

The examination requirement which must be met by an applicant for licensure as a marriage and family therapist under Subsection 58-60-305(7) is passing the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards.

R156-60b-302d[e]. Qualifications for Designation as an Approved Marriage and Family Therapist Training Supervisor and Mental Health Therapist Training Supervisor.

To be approved by the division in collaboration with the board as a supervisor of marriage and family therapist and mental health therapy training required under Subsections 58-60-305(5) and (6) and Section 58-60-116, an individual shall:

(1) be currently approved by AAMFT as a marriage and family therapist supervisor; or

(2) be currently licensed or certified in good standing as a marriage and family therapist in the state in which the supervised training is being performed; and meet the following requirements:

(a) demonstrate practice as a licensed marriage and family therapist engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years;

(b) successfully complete 30 clock hours of instruction approved by the division in collaboration with the board in the theory, practice, and process of supervision;

(c) successfully complete 36 clock hours of training related to the practice of supervision under the direction of an approved marriage and family therapist training supervisor; and

(d) if providing supervision within the state, submit an application on forms available from the division and be approved as a supervisor by the division in collaboration with the board prior to engaging in supervision of training required for licensure; or

(3) if supervision was provided outside the state, submit evidence of qualifications as a supervisor on forms available from the division providing evidence that during the period of supervision of an applicant for licensure, that the supervisor in all respect met the qualifications for a supervisor within the state under this section.

(4) A marriage and family therapist approved as a supervisor under Subsection (2) must reapply for approval every five years.

R156-60b-302e[f]. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.

The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established as follows:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;

(9) complete four hours of the required 40 hours of continuing professional education directly related to marriage and family therapy supervisor training in each two year continuing professional education period established; and

(10) supervise not more than three supervisees at any given time unless approved by the board and division.

R156-60b-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist.

(2) During each two year period commencing ~~January 1st~~ September 30th of each even numbered year, a marriage and family therapist shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 14 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification;

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist;

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years; however, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60b-306. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) upon request, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a marriage and family therapist and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of marriage and family therapy and mental health therapy training as a marriage and family ~~[therapy trainee]~~therapist-temporary;

(3) pass the Examination of Marital and Family Therapy of the American Association for Marriage and Family Therapists if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a marriage and family therapist; and

(4) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a marriage and family therapist.

KEY: licensing, therapists, marriage and family therapist*

~~[February 18,]1998~~

58-1-106(1)

58-1-202(1)

58-60-301



Commerce, Occupational and Professional Licensing
R156-60c
Professional Counselor Licensing Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21008

FILED: 04/21/98, 15:19

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Changes to the rules are being proposed as a result of amendments made to the Mental Health Professional Practice Act, Title 58, Chapter 60, Part I, during the 1998 legislative session (H.B. 441).

(DAR Note: H.B. 441 is found at 1998 Utah Laws 311, and was effective May 4, 1998.)

SUMMARY: Deleted the definition of "professional counselor intern." Added a definition for "temporary certificate." Eliminates the term "professional counselor intern" and replaces it with "professional counselor-temporary." Deleted the section on endorsement (Section R156-60c-302c) which is no longer necessary with the statute change. Changed the two year period commencement date with respect to continuing education from "January 1st" to "September 30th."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 58-60-401, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Some cost savings to the Division in that less resources will be needed to process endorsement applications.

❖LOCAL GOVERNMENTS: The Division is unaware of any local government which hires professional counselors; therefore, no effect on local governments.

❖OTHER PERSONS: Employers of professional counselor-temporary licensees: Higher cost to obtain temporary license of \$50 rather than a trainee registration of \$10. However, the costs may be offset by the decreased cost and ability to immediately license an individual licensed in another state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Those who are applying for a professional counselor-temporary will pay \$40 more. Those applying for licensure as a professional counselor by endorsement may save money because they don't have to take any core course work or the national examination.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Laura Poe at the above address, by phone at (801) 530-6789, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.lpoe@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.**R156-60c. Professional Counselor Licensing Act Rules.****R156-60c-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "Internship" means:

(a) 600 clock hours of supervised counseling experience of which 200 hours must be in the provision of mental health therapy; or

(b) five years of supervised experience engaged in the practice of mental health therapy.

(2) "Practicum" means a supervised counseling experience in an appropriate setting of at least three semester or five quarter hours duration for academic credit.

(3) [~~"Professional counselor intern" means an individual who is registered with the division and is engaged in completion of supervised professional counselor training or supervised mental~~

~~health therapy training.]~~ "Temporary certificate", as used in Section 58-60-116, means a temporary license issued by the division to practice as a professional counselor-temporary under the supervision of an approved supervisor in accordance with Section 58-60-116 and Sections R156-60c-302b and R156-60c-401.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60c-502.

R156-60c-302a. Qualifications for Licensure - Education Requirements.

(1) The recognized accredited institution of higher education in Subsection 58-60-405(4) is one which is accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 1996-97 edition, published for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education.

(2) The core curriculum in Subsection 58-60-405(4)(a) shall consist of the following courses:

(a) a minimum of two semester or three quarter hours shall be in ethical standards, issues, behavior and decision-making;

(b) a minimum of two semester or three quarter hours shall be in professional roles and functions, trends and history, professional preparation standards and credentialing;

(c) a minimum of two semester or three quarter hours shall be in individual theory;

(d) a minimum of two semester or three quarter hours shall be in group theory;

(e) a minimum of six semester or nine quarter hours shall be in human growth and development. Examples are:

(i) physical, social and psychosocial development;

(ii) personality development;

(iii) learning theory and cognitive development;

(iv) emotional development;

(v) life-span development;

(vi) enhancing wellness;

(vii) human sexuality; and

(viii) career development;

(f) a minimum of three semester or five quarter hours shall be in cultural foundations. Examples are:

(i) human diversity;

(ii) multicultural issues and trends;

(iii) gender issues;

(iv) exceptionality;

(v) disabilities;

(vi) aging; and

(vii) discrimination;

(g) a minimum of six semester or nine quarter hours shall be in the application of individual and group therapy and other therapeutic methods and interventions. Examples are:

(i) building, maintaining and terminating relationships;

(ii) solution-focused and brief therapy;

(iii) crisis intervention;

(iv) prevention of mental illness;

(v) treatment of specific syndromes;

(vi) case conceptualization;

(vii) referral, supportive and follow-up services; and

(viii) lab not to exceed four semester or six quarter hours;

(h) a minimum of two semester or three quarter hours shall be in psychopathology and DSM classification;

(i) a minimum of two semester or three quarter hours shall be in dysfunctional behaviors. Examples are:

- (i) addictions;
- (ii) substance abuse;
- (iii) cognitive dysfunction;
- (iv) sexual dysfunction; and
- (v) abuse and violence;

(j) a minimum of two semester or three quarter hours shall be in a foundation course in test and measurement theory;

(k) a minimum of two semester or three quarter hours shall be in an advanced course in assessment of mental status;

(l) a minimum of three semester or five quarter hours shall be in research and evaluation. This shall not include a thesis, dissertation, or project, but may include:

- (i) statistics;
- (ii) research methods, qualitative and quantitative;
- (iii) use and interpretation of research data;
- (iv) evaluation of client change; and
- (v) program evaluation;

(m) a minimum of three semester or five quarter hours of practicum as defined in Subsection R156-60c-102(2);

(n) a minimum of six semester or nine quarter hours of internship as defined in Subsection R156-60c-102(1); and

(o) a minimum of 16 semester or 23 quarter hours of course work in the behavioral sciences. No more than six semester or nine quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required core curriculum hours in this subsection. These hours are required beginning January 1, 1997.

(3) The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (1) [;] and (2) ~~and (3)~~ in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(4) Professional counseling course work required in the core curriculum may be completed post degree.

~~[(5) An applicant must complete the requirements in Subsections (1), (2), (3) and (4) prior to commencing the professional counselor training under Subsection 58-60-405(5).]~~

R156-60c-302b. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-60-405(5) and (6), each individual entering into supervised professional counselor training under an approved supervisor shall obtain a license as a professional counselor-temporary under Section 58-60-116 ~~[approval of the supervisor by filing an application for approval of training supervisor with the division. The division shall notify the applicant in writing whether the supervisor is approved or approval is denied.]~~

(2) A change in supervisor must be submitted to the Division on forms prescribed by the Division ~~[preceded by a new application and approval in accordance with the provisions of Subsection (1)].~~

(3) Professional counselor and mental health therapy training consisting of a minimum of 4,000 hours qualifying an applicant for licensure as a professional counselor under Subsections 58-60-405(5) and (6), to be approved by the division in collaboration with the board, shall:

(a) be completed in not less than two years ~~[and in not more than four years, unless otherwise approved by the board and division];~~

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy under the supervision of an approved professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist; and

(c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(4) An applicant for licensure as a professional counselor, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the professional counselor and mental health therapy training requirements under Subsection (3) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405(5) and (6), and Subsections R156-60c-302b(3). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection.

~~R156-60c-302c. Qualifications for Licensure by Endorsement - Training Equivalence.~~

~~—In accordance with Section 58-1-302, the equivalent experience requirement for licensure by endorsement shall be satisfied if the applicant has engaged in practice as a licensed professional counselor engaged in mental health therapy for not less than two years (4,000 hours) immediately preceding the date of the application.]~~

R156-60c-302[d]c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which must be met by an applicant for licensure as a professional counselor under Subsection 58-60-405(7) are established as follows:

(a) the Utah Professional Counselor Law, Rules and Ethics Examination with a score of at least 75;

(b) the National Counseling Examination of the National Board for Certified Counselors with the minimum criterion score as set by the National Board for Certified Counselors; and

(c) the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors with the minimum criterion score as set by the National Board for Certified Counselors. This examination is required beginning January 1, 1997.

R156-60c-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a professional counselor.

(2) During each two year period commencing ~~[January 1st]~~ September 30th of each even numbered year, a professional counselor shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified professional education under this Section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist professional counselor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy professional counseling, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist professional counselor.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this Section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this Section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60c-306. License Reinstatement - Requirements.

In addition to the requirements established in Section R156-1-308e, an applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) if deemed necessary, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a professional counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of professional counselor and mental health therapy training as a professional counselor-~~temporary~~-~~trainee~~];

(3) pass the Utah Professional Counselor Law, Rules and Ethics Examination;

(4) pass the National Counseling Examination of the National Board for Certified Counselors if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor;

(5) pass the National Clinical Mental Health Counseling Examination if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor; and

(6) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a professional counselor.

KEY: licensing, counselors, mental health, professional counselors*

[February 3,]1998

58-60-401

58-1-106(1)

58-1-202(1)



**Crime Victim Reparations,
Administration
R270-1
Award and Reparation Standards**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 21061

FILED: 05/01/98, 10:17

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: After Board review, changes and additions to the existing rule were authorized.

SUMMARY: Changes the age eligibility for mental health awards for child sexual abuse victims who become perpetrators in Subsection R270-1-4(A)(6). Adds Section R270-1-26, "Rent Awards," which provides rental assistance to qualifying domestic violence and child abuse victims.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Subsection 63-25a-406(c)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING
REGULAR BUSINESS HOURS, AT:
Crime Victim Reparations
Administration
Suite 200
350 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Dan R. Davis at the above address, by phone at (801) 533-
4000, by FAX at (801) 533-4127, or by Internet E-mail at
ddavis@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING
BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO
LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 07/01/98

AUTHORIZED BY: Dan R. Davis, Director

R270. Crime Victim Reparations, Administration.
R270-1. Award and Reparation Standards.

.....

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63-25a-402(20) and 63-25a-
411(4)(c), out-patient mental health counseling awards are subject
to limitations as follows:

1. Primary victims of a crime shall be eligible for a \$2500
maximum mental health counseling award. The reparation officer
shall approve a standardized treatment plan based on these
limitations. Extenuating circumstances warranting consideration of
counseling beyond the \$2500 maximum may be submitted by the
mental health provider after the maximum award has been reached.
The cost of a mental health evaluation may not exceed \$300 and
shall be part of the \$2500 maximum. For purposes herein, an
evaluation shall be defined as a diagnostic interview examination
including history, mental status, or disposition, in order to
determine a plan of mental health treatment.

2. Secondary victims who are not primary victims pursuant to
Subsections 63-25a-402(37)(39) and who witness or are
traumatically affected by the violent crime shall be eligible for a
\$1000 maximum mental health counseling award only under the
following circumstances:

(a) counseling for immediate family members (spouse, father,
mother, stepparents, child, brother, sister, stepchild, stepbrother and
stepsister) or legal guardian of homicide victims, and victims of
child physical or sexual abuse;

(b) counseling for children of domestic violence crimes.

The reparation officer shall approve a standardized treatment
plan based on these limitations. Extenuating circumstances
warranting consideration of counseling beyond the \$1000 maximum
may be submitted by the mental health provider after the maximum

award has been reached. The cost of a mental health evaluation
may not exceed \$300 and shall be part of the \$1000 maximum. For
purposes herein, an evaluation shall be defined as diagnostic
interview examination including history, mental status, or
disposition, in order to determine a plan of mental health treatment.

3. Counseling costs will not be paid in advance but will be
paid on an ongoing basis as victim is being billed.

4. In-patient hospitalization shall only be considered when the
treatment has been recommended by a licensed therapist in life-
threatening situations. In these cases the Crime Victim Reparations
Board shall consider reimbursement of in-patient treatment or
contract with a managed mental health care provider to make
recommendations to the Reparations Officer regarding treatment. A
direct relationship to the crime needs to be established. Acute in-
patient hospitalization shall not exceed \$600 per day, which
includes all ancillary expenses, and will be considered payment in
full to the provider. Inpatient psychiatric visits will be limited to
one visit per day with payment for the visit made to the institution
at the highest rate of the individuals providing therapy as set by
rule. Reimbursement for testing costs may also be allowed.
Secondary victims shall not be considered for in-patient
hospitalization.

5. Residential and day treatment shall only be considered
when the treatment has been recommended by a licensed therapist
to stabilize the victim's behavior and symptoms. Residential and
day treatment shall not be used for extended care of dysfunctional
families and containment placements. A direct relationship to the
crime needs to be established. Only facilities with 24 hour nursing
care can be considered. Residential treatment shall not exceed \$300
per day and will be considered payment in full to the provider.
Residential treatment shall be limited to 30 days. Day treatment
shall not exceed \$200 per day and will be considered payment in
full to the provider. Secondary victims shall not be considered for
residential or day treatment.

6. Child sexual abuse victims under the age of ~~[+8]~~13 who
become perpetrators shall only be considered for ~~[reparation]~~mental
health treatment awards directly related to the victimization.
Perpetrators age 13 and over who have been child sexual abuse
victims shall not be eligible for compensation. The CVR Board or
contracting agency for managed mental health care~~[-for in-patient;
residential and day treatment]~~ shall help establish a reasonable
percentage regarding victimization treatment for inpatient,
residential and day treatment. Out-patient claims shall be ~~[reviewed
by the Volunteer Peer Review Committee]~~determined by the
Reparation Officer on a case by case basis upon review of the
mental health treatment plan. ~~[Victims age 18 and over who
become perpetrators shall not be eligible for compensation]~~The
CVR Board may further clarify this rule by parameters set through
written internal policy and procedures.

7. Payment for mental health counseling shall only be made
to licensed therapists; or to individuals working towards a license,
registered with the State of Utah Department of Commerce,
Division of Professional and Occupational Licensing and
supervised by a licensed therapist.

8. Payment of hypnotherapy shall only be considered when
treatment is performed by a licensed mental health therapist based
upon an approved Treatment Plan.

9. The following maximum amounts shall be payable for
mental health counseling:

(a) up to \$125 per hour for individual and family therapy performed by licensed psychiatrists, and up to \$62.50 per hour for group therapy;

(b) up to \$85 per hour for individual and family therapy performed by licensed psychologists and up to \$42.50 per hour for group therapy;

(c) up to \$65 per hour for individual and family therapy performed by an L.C.S.W., M.S.W. or marriage and family therapist, and up to \$32.50 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

10. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVR Board may review extenuating circumstance cases.

.....

R270-1-26. Rent Awards.

A. Pursuant to Subsection 63-25a-411(4)(a), victims of domestic violence or child abuse may be awarded a one time only rental award for actual rent expenses of \$1800 for a maximum of three months if the following conditions apply:

1. The perpetrator was living with the victim at the time of the crime or the rent assistance appears directly related to the victim's ability to distance herself/himself from the perpetrator.

2. It appears reasonable that the perpetrator was assisting or was solely responsible for rent.

3. The victim agrees that the perpetrator is not allowed on the premises.

This rule may be further defined through written internal policy and procedures.

KEY: victim compensation, victims of crimes
[July 2, 1997] July 1, 1998 63-25a-401 et seq.
Notice of Continuation December 23, 1996



Education, Administration
R277-116
USOE Internal Audit Procedure

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 21076

FILED: 05/01/98, 12:20

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: This rule is being amended to clarify that the Utah State Office of Education (USOE) Internal Auditor acts under the immediate direction of the State Board of Education.

SUMMARY: This rule has been changed to reflect the direct supervision of the Utah State Office of Education (USOE) Internal Auditor by the State Board of Education.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Subsection 53A-1-401(4)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Carol B. Lear, Education Specialist

R277. Education, Administration.

R277-116. USOE Internal Audit Procedure.

R277-116-1. Definitions.

A. "Audit" means performance audits, including economy and efficiency audits and program audits or financial-related audits as outlined in GOVERNMENT AUDITING STANDARDS, Comptroller General of the United States, 1988 revision which is hereby incorporated by reference, and available from the USOE Internal Auditor and at the Utah Attorney General's Office.

B. "Board" means the 15 member elected Utah State Board of Education/Utah State Board for ~~[Vocational]~~Applied Technology Education.

C. "Yellow Book Standards" means the auditing standards outlined in the GOVERNMENT AUDITING STANDARDS (complete citation above).

D. "Internal Auditor" means the ~~[Utah State Office of Education]Board's~~ Internal Auditor ~~[employed by the audit committee of the]~~who is direct staff, has a personal and confidential relationship to the Board, and who is appointed by the Board for the purpose of conducting performance audits, including economy and efficiency audits and program audits or financial-related audits as outlined in GOVERNMENT AUDITING STANDARDS. The Internal Auditor may conduct other auditing assignments as directed by the Board. The Internal Auditor cooperates and coordinates with

the Audit Committee. The Internal Auditor's performance is evaluated by the Board or a committee of Board members.

E. "Audit Committee" means the audit committee of the Board composed of ~~[Board members]~~the Chairman, Vice Chairman and three Standing Committee Chairs of the Board given the responsibility to determine the relative importance of audit requests, receive reports from the internal auditor, and release audit reports to Board members and other interested parties.

F. "USOE" means the Utah State Office of Education.

G. "LEA" means any local education agency under the supervision of the Board including local school districts, regional service centers, area technology centers and vocational programs.

R277-116-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section ~~[53A-1-401(1) which gives the Board general control and supervision of the public school system]~~53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-1-401(4) which directs the Board to adopt rules to promote quality, efficiency and productivity and to eliminate unnecessary duplication in the public education system, Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts, Section 53A-1-402(1)(f) which directs the Board to develop rules and minimum standards regarding cost effectiveness measures, school budget formats and financial accounting requirements for the local school districts and by Section 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of local school districts and programs funded under the Minimum School Program and report its findings to the Legislature.

B. The purpose of this rule is to outline the Board's criteria and procedures for internal audits of programs under its supervision.

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R277-116-4. Internal Auditor Authority and Responsibilities.

A. The Internal Auditor reports directly to and is responsible solely to the Board, in cooperation with the Audit Committee.

B. The Internal Auditor shall conduct audits~~[, as directed]~~ as may be recommended by the Audit Committee, and as directed by the Board, including economy and efficiency audits, program audits, and financial-related audits of any program, function, LEA, or division under the Board's supervision, or as otherwise directed by the Board.

C. The Internal Auditor shall have access to all records, personnel, and physical materials relevant and necessary to conduct audits of all programs and agencies supervised by the Board.

D. The Internal Auditor shall notify the Audit Committee and the Board in a timely manner of any irregularity or serious deficiency discovered in the audit process.

E. The Internal Auditor shall submit a written report to the Audit Committee and the Board of each ~~[audit]~~ authorized audit ~~[by the Audit Committee]~~ within a reasonable time after completion of the audit.

F. The Internal Auditor shall review, upon the Board's direction, the implementation of recommendations or alternative actions taken as a result of an audit.

.....

**KEY: educational administration
199[2]8**

Notice of Continuation September 12, 1997

**Art X Sec 3
53A-1-401(~~F~~)3
53A-1-401(4)
53A-1-405
53A-1-402(1)(f)
53A-17a-147(2)**



**Environmental Quality, Air Quality
R307-1-2
General Requirements**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 21015
FILED: 04/27/98, 15:41
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The amendment provides for informal proceedings for actions under the Lead Based Paint abatement rule, R307-840.

(**DAR Note:** The proposed new rule for R307-840 is under DAR No. 21016 in this *Bulletin*.)

SUMMARY: Adds Subsection R307-1-2(5)(1)(F) to provide for informal proceedings as required by Section 63-46b-4.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 19-2-104 and 63-46b-4

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: Informal proceedings will be less expensive than the other option, formal proceedings.
 - ❖LOCAL GOVERNMENTS: No impact.
 - ❖OTHER PERSONS: Informal proceedings will be less expensive than the other option, formal proceedings.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: Informal proceedings will be less expensive than the other option, formal proceedings.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Air Quality
150 North 1950 West
Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/98, 1:30 p.m., Room 201, Department of Environmental Quality (DEQ) Bldg., 168 North 1950 West, Salt Lake City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 07/02/98

AUTHORIZED BY: Ursula K. Trueman, Director

R307. Environmental Quality, Air Quality.

R307-1. Utah Air Conservation Rules.

R307-1-2. General Requirements.

2.1 Air Pollution Prohibited. Emission of air contaminants in sufficient quantities to cause air pollution as defined in subsection 1.11 of R307-1-1 is prohibited. The State statute provides for penalties up to \$50,000/day for violation of State statutes, regulations, rules or standards (See Section 19-2-115 for further details).

2.2 Periodic Reports of Emissions and Availability of Information. The owner or operator of any stationary air-contaminant source in Utah shall furnish to the Board the periodic reports required under Section 19-2-104(1)(c) and any other information as the Board may deem necessary to determine whether the source is in compliance with Utah and Federal regulations and standards. The information thus obtained will be correlated with applicable emission standards or limitations and will be available to the public during normal business hours at the Division of Air Quality.

2.3 Variances Authorized

2.3.1 Variance from these regulations may be granted by the Board as provided by law (See Section 19-2-113) unless prohibited by the Clean Air Act:

A. to permit operation of an air pollution source for the time period involved in installing or constructing air pollution control equipment in accordance with a compliance schedule negotiated by the Executive Secretary and approved by the Board.

B. to permit operation of an air pollution source where there is no practicable means known or available for adequate prevention, abatement or control of the air pollutants involved. Such a variance shall be only until the necessary means for prevention, abatement or control becomes known and available, subject to the use of substitute or alternate measures the Board may prescribe.

C. to permit operation of an air pollution source where the control measures, because of their extent or cost, must be spread over a considerable period of time.

2.3.2 Variance requests, as set forth in Section 19-2-113, may be submitted by the owner or operator who is in control of any plant, building, structure, establishment, process or equipment.

2.4 General Burning.

As provided in Section 19-2-114, the provisions of R307-1-2.4.1 through R307-1-2.4.5 below are not applicable to:

(1) burning incident to horticultural or agricultural operations of:

- (a) prunings from trees, bushes, and plants; or
- (b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index is above 500.

See also Section 11-7-1(2)(a).

2.4.1 Community Waste Disposal. No open burning shall be done at sites used for disposal of community trash, garbage and other wastes except as authorized through a variance or as authorized for a specific period of time by the Board on the basis of justifiable circumstances reviewed and weighed in terms of pollution effects and other relevant considerations at an appropriate hearing following written application.

2.4.2 General Prohibitions. No person shall burn any trash, garbage or other wastes, or shall conduct any salvage operation by open burning except in conformity with the provisions of Subsections R307-1-2.4.3 and R307-1-2.4.4.

2.4.3 Permissible Burning - Without Permit. When not prohibited by other laws or by other officials having jurisdiction and provided that a nuisance as defined in Section 76-10-803 is not created, the following types of open burning are permissible without the necessity of securing a permit:

A. in devices for the primary purpose of preparing food such as outdoor grills and fireplaces;

B. campfires and fires used solely for recreational purposes where such fires are under control of a responsible person;

C. in indoor fireplaces and residential solid fuel burning devices except as provided in Subsection R307-17-3 of these regulations;

D. properly operated industrial flares for combustion of flammable gases; and

E. burning, on the premises, of combustible household wastes generated by occupants of dwellings of four family units or less in those areas only where no public or duly licensed disposal service is available.

2.4.4 Permissible Burning - With Permit. Open burning is authorized by the issuance of a permit as specified in R307-1-2.4.4.B when not prohibited by other laws or other officials having jurisdiction, and when a nuisance as defined in Section 76-10-803 is not created.

A. Individual permits for the types of burning listed in R307-1-2.4.4.B may be issued by an authorized local authority under the "clearing index" system approved and coordinated by the Department of Environmental Quality.

B. Types of burning for which a permit may be granted are:

(1) open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations such as sawdust and scrap lumber;

(2) open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil or other materials which can cause severe air pollution are not used to start fires or keep fires burning;

(3) open burning of solid or liquid fuels or structures for removal of hazards or eyesores;

(4) open burning, in remote areas, of highly explosive or other hazardous materials, for which there is no other known practical method of disposal;

(5) open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities provided that the following conditions have been met:

(a) in any area of the state, the local county fire marshall has established a 30 day period between March 30 and May 30 for such burning to occur and notified the executive secretary of the open burning period prior to the commencement of the 30 day period, or, in areas which are located outside of Salt Lake, Davis, Weber, and Utah Counties, the local county fire marshall has established, if allowed by the state forester under Section 65A-8-9, a 30 day period between September 15 and October 30 for such burning to occur and has notified the executive secretary of the opening burning period prior to the commencement of the 30 day period;

(b) such burning occurs during the period established by the local county fire marshall;

(c) materials to be burned are thoroughly dry;

(d) no trash, rubbish, tires, or oil are used to start fires or included in the material to be burned.

C. The Board may grant a permit for types of open burning not specified in R307-1-2.4.4.B on written application if the Board finds that the burning is not inconsistent with the State Implementation Plan.

2.4.5 Special Conditions. Open burning for special purposes, or under unusual or emergency circumstances, may be approved by the executive secretary.

2.5 Confidentiality of Information

Any person submitting information pursuant to these regulations may request that such information be treated as a trade secret or on a confidential basis, in which case the executive secretary and Board shall so treat such information. If no claim is made at the time of submission, the executive secretary may make the information available to the public without further notice. Information required to be disclosed to the public under State or Federal law may not be requested to be kept confidential. Justification supporting claims of confidentiality shall be provided at the time of submission on the information. Each page claimed "confidential" shall be marked "confidential business information" by the applicant and the confidential information on each page shall be clearly specified. Claims of confidentiality for the name and address of applicants for an approval order will be denied. Confidential information or any other information or report received by the executive secretary or Board shall be available to EPA upon request and the person who submitted the information shall be notified simultaneously of its release to EPA.

2.5.1 The following proceedings and actions are designated to be conducted either formally or informally as required by Section 63-46b-4:

A. Notices of Intent and Approval Orders shall be processed informally using the procedures identified in Section R307-1-3. Appeals of denials of or conditions in an approval order shall be conducted formally.

B. Issuance of Notices of Violations and Orders are exempt under Section 63-46b-1(2)(k). Appeals of Notices of Violation and Orders shall be processed as formal proceedings.

C. Requests for variances shall be processed informally using the procedures in Section 19-2-113 and Subsection R307-1-2.3.

D. Qualification for Tank Vapor Tightness Testing shall be conducted informally using the procedures identified in Section R307-3-4.

E. Certification of Asbestos Contractors shall be conducted informally using the procedures identified in Section R307-1-8.

F. Certification and accreditation under R307-840, Lead-Based Paint, as well as revocation, denial and modification of such certification shall be conducted as informal proceedings.

G. Any other request or approvals for experiments, testing, control plans, etc., shall be conducted informally using the procedures identified in R307-1.

2.5.2 At any time before a final order is issued, the Board or appointed hearing officer may convert proceedings which are designated to be informal to formal, and proceedings which are designated as formal to informal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

2.5.3 Rules for conducting formal proceedings shall be as provided in Section 63-46b-3 and in Sections 63-46b-6 through 63-46b-13. In addition to the procedures referenced in Subsection R307-1-2.5.1 above, the procedures in Sections 63-46b-3 and 63-46b-5 apply to informal proceedings.

2.5.4 Declaratory Orders. In accordance with the provisions of Section 63-46b-21, any person may file a request for a declaratory order. The request shall be titled a petition for declaratory order and shall specifically identify the issues requested to be the subject of the order. Requests for declaratory order, if set for adjudicative hearing, will be processed informally using the procedures identified in Sections 63-46b-3 and 63-46b-5 unless converted to a formal proceeding under Subsection R307-1-2.5.2 above. No declaratory orders will be issued in the circumstances described in Subsection 63-46b-21(3)(a). Intervention rights and other procedures governing declaratory orders are outlined in Section 63-46b-21.

KEY: air pollution, motor vehicles, major sources*
[February 5,]1998 **19-2-104**
Notice of Continuation June 2, 1997 **19-2-109**
19-2-124



Environmental Quality, Air Quality
R307-2-13
Section IX, Control Measures for Area and Point Sources, Part D, Ozone

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 21031
FILED: 04/30/98, 14:31
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: This proposal amends the State Implementation Plan for ozone for Salt Lake and Davis Counties to reflect change in the federal health-based standard for ozone issued in July 1997, and makes other changes.

SUMMARY: (1) Remove the triggering mechanism for contingency measures, which presently triggers additional control measures if ozone measurements violate the old one-hour standard of 0.12 parts per million (ppm). The revision specifies that the Air Quality Board periodically will review such relevant data as ozone levels, emission inventories, and growth projections and may implement the contingency measures as needed to attain or maintain the new 8-hour ozone standard of 0.08 ppm. The Environmental Protection Agency (EPA) will designate areas which do not attain the new standard in 2000. The improved vehicle emissions programs in Salt Lake and Davis Counties, as well as new federal requirements for vehicles, paints, consumer products and locomotives may prevent violations in the future. If so, triggering the contingency measures would be unnecessary. (2) Delete the commitment to adopt further controls for sources of nitrogen oxide emissions because the Salt Lake-Davis area has already met the old standard for ozone without them. (3) Based on federal transportation conformity amendments issued in August 1997, revise the provision for allocation of the safety margin, the difference between total pollutant expected in the future and the total emissions limit needed to avoid exceeding the standard. The proposal allows the Board to allocate any portion of the safety margin to any emissions source. (4) Remove all references to carbon monoxide, which is not a significant component of ozone formation. (5) Remove references to an annual inventory, because inventory data is now collected every third year and forecast or backcast for the intervening years.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 19-2-104

THIS FILING INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: State Implementation Plan Section IX, Control Measures for Area and Point Sources, Part D, Ozone

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Avoid staff costs in developing rules for nitrogen oxide and carbon monoxide emissions and for administering contingency measures if triggered by the old standard.

❖LOCAL GOVERNMENTS: No change.

❖OTHER PERSONS: Avoid costs for complying with contingency measures if triggered under the old standard. Avoid costs for complying with further controls for nitrogen oxide emissions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Avoid costs for complying with contingency measures if triggered under the old standard. Avoid costs for complying with further controls for nitrogen oxide emissions.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Air Quality
150 North 1950 West
Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/98, 5:00 p.m., Room 201, Department of Environmental Quality (DEQ) Bldg., 168 North 1950 West, Salt Lake City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 07/02/98

AUTHORIZED BY: Ursula K. Trueman, Director

**R307. Environmental Quality, Air Quality.
R307-2. Utah State Implementation Plan.
R307-2-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on ~~January 8, 1997~~ July 1, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, environmental protection, small business assistance program*, particulate matter
~~January 8, 1998~~ **19-2-104**
Notice of Continuation June 2, 1997



Environmental Quality, Air Quality
R307-6
De minimis Emissions from Air Strippers and Soil Venting Projects

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE No.: 21009
FILED: 04/22/98, 16:55
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The rule is re-written to bring it into alignment with actual practices, and is moved to R307-413.

SUMMARY: This rule is repealed in its entirety. (DAR Note: The proposed new rule for R307-413, which replaces this rule, is under DAR No. 21010 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No change from existing practice.
❖LOCAL GOVERNMENTS: No change from existing practice.
❖OTHER PERSONS: No change from existing practice.
COMPLIANCE COSTS FOR AFFECTED PERSONS: No change from existing practice.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Air Quality
150 North 1950 West
Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/02/98, 1:30 p.m., Room 201, Department of Environmental Quality (DEQ) Bldg., 168 North 1950 West, Salt Lake City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 07/02/98

AUTHORIZED BY: Ursula K. Trueman, Director

R307. Environmental Quality, Air Quality.
~~[R307-6. De minimis Emissions from Air Strippers and Soil Venting Projects:~~

~~R307-6-1. Policy of the Air Quality Board for De minimis Emissions From Air Strippers and Soil Venting Projects:~~

~~— A. Whenever a person uses an air stripper or soil venting to conduct a soils decontamination project or clean-up associated with storage tank testing, removal or installation, and can demonstrate that the estimated annual emissions of total hydrocarbons from a given project would be equal to or less than 1.5 tons/year, the project will not be required to obtain an air quality approval order if it is able to meet the following conditions:~~

~~— 1. The emissions of benzene are less than 2.0 pounds/24 hour period:~~

~~— 2. Either the air stripper exhaust stack exit point is 35 feet or more above grade and the stripper exhaust flow rate is at least 800 actual cubic feet/minute or a granulated carbon adsorption unit is installed after an oil/water separator:~~

~~— B. To demonstrate that the above limitation of 2.0 pounds of benzene per 24 hour period is not exceeded, the following monitoring shall be conducted:~~

~~— 1. The emissions estimate of benzene shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #602 or #624 or other test method as approved by the executive secretary of the Utah Air Quality Board:~~

~~— 2. The test samples shall be drawn on at least 28-day and no greater than 31-day intervals (i.e., monthly):~~

~~— 3. Results of the tests shall be submitted to the executive secretary within one month of sampling:~~

~~— C. Those decontamination or clean-up projects not meeting the above conditions must be technically reviewed in accordance with Subsection R307-1-3.1 of the Utah Air Conservation Rules:~~

~~KEY: air quality, environmental health, contamination
1990 19-2-104
Notice of Continuation October 1, 1995]~~



Environmental Quality, Air Quality
R307-12
(Changed to R307-205)
Fugitive Emissions and Fugitive Dust

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE No.: 21079
FILED: 05/01/98, 13:37
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Renumber the rule to R307-205 and move provisions applicable to Davis, Salt Lake, Utah and Weber Counties to R307-309.

SUMMARY: There are no substantive changes applicable statewide. Provisions for the Wasatch Front are moved to new rule R307-309. Nonsubstantive changes include renumbering R307-12 to R307-205 to fit the new numbering of all R307 rules which will be published in the June 1 *Bulletin*, including renumbering internal citations to other rules.

(DAR Note: The proposed new rule for R307-309 is under DAR No. 21080 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No change.
❖LOCAL GOVERNMENTS: No change.

❖ OTHER PERSONS: No change.
 COMPLIANCE COSTS FOR AFFECTED PERSONS: No change.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING
 REGULAR BUSINESS HOURS, AT:

Environmental Quality
 Air Quality
 150 North 1950 West
 Box 144820
 Salt Lake City, UT 84114-4820, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
 Jan Miller at the above address, by phone at (801) 536-4042,
 by FAX at (801) 536-4099, or by Internet E-mail at
 jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING
 BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO
 LATER THAN 5:00 P.M. ON 07/06/98; OR ATTENDING A PUBLIC
 HEARING SCHEDULED FOR , , Provo: City Council Chambers,
 351 West Center Street, June 1, 7:00 - 9:00 p.m.; Salt Lake
 City: Room 101, Department of Environmental Quality (DEQ)
 Building, 168 North 1950 West, June 3, 6:00 - 8:00 p.m.;
 North Salt Lake: Orchard Elementary School, 205 East
 Center Street, June 2, 6:00 - 8:00 p.m.; Ogden: Weber-
 Morgan Health District Office, 2570 Grant Ave, June 9, 6:00 -
 8:00 p.m.

THIS FILING MAY BECOME EFFECTIVE ON: 08/06/98

AUTHORIZED BY: Ursula K. Trueman, Director

R307. Environmental Quality, Air Quality.
R307-~~12~~205. Fugitive Emissions and Fugitive Dust.
R307-~~12~~205-1. Applicability.

(1) The provisions of R307-~~12~~205 shall not apply to any
 sources for which limitations for fugitive dust or fugitive emissions
 are assigned pursuant to [R307-1-3.1 or R307-1-3.2]R307-401,
 R307-305-3 through 8, or R307-307 nor shall they apply to
 agricultural or horticultural activities.

(2) The following definitions apply throughout R307-205:

"Material" means sand, gravel, soil, minerals or other matter
 which may create fugitive dust.

"Road" means any public or private road.

R307-~~12~~205-2. Fugitive Emissions.

~~2.A. In actual areas of nonattainment for particulates, fugitive
 emissions from any source shall not exceed 20% opacity.~~

~~2.B.]Fugitive emissions from sources [in other areas of the
 State]in areas outside Davis, Salt Lake and Utah Counties, Ogden
 City and any nonattainment area for PM10 and which were
 constructed before April 25, 1971, shall not exceed 40% opacity.
 Fugitive emissions from sources constructed after April 25, 1971,
 shall not exceed 20% opacity.~~

R307-~~12~~205-3. Fugitive Dust.

The following control and~~for~~ operating procedures are
 applicable to minimize fugitive dust:

~~3.A.](1) Storage and Handling of Aggregate Materials.[
 —(1)] Any person owning, operating or maintaining a new or
 existing material storage, handling ~~and~~or hauling operation shall
 minimize fugitive dust from such an operation. Such control may
 include the use of enclosures, covers, stabilization ~~and~~or other
 equivalent methods or techniques as approved by the executive
 secretary.[~~

~~—(2) Any person owning and/or operating an existing material
 storage, handling and/or hauling operation in an actual area of
 nonattainment for particulate shall submit plans for control of
 fugitive dust from such operations to the executive secretary for
 approval no later than September 29, 1981, 180 days after the
 effective date of this regulation.]~~

~~3.B.](2) Construction~~]~~ and Demolition Activities.~~

~~(1)]a) Any person engaging in clearing or leveling of land
~~over 1/4]greater than one-quarter~~ acre in size, earthmoving,
 excavation, or movement of trucks or construction equipment over
 cleared land ~~over 1/4]greater than one-quarter~~ acre in size or access
 haul roads shall take steps to minimize fugitive dust from such
 activities. Such control may include but is not limited to watering
 and~~for~~ chemical stabilization of potential fugitive dust sources or
 other equivalent methods or techniques approved by the executive
 secretary.~~

~~(2)]b) The owner or operator of land areas ~~over 1/4]greater
 than one-quarter~~ acre in size that have been cleared or excavated
 shall take measures to prevent fugitive particulate matter from
 becoming airborne. Such measures may include, but are not limited to:~~

~~(a)]i) planting vegetative cover,~~

~~(b)]ii) providing synthetic cover,~~

~~(c)]iii) watering and~~for~~ chemical stabilization,~~

~~(d)]iv) wind breaks, and~~for~~~~

~~(e)]v) other equivalent methods or techniques approved by the
 executive secretary.~~

~~(3)]c) Any person engaging in demolition activities including
 razing ~~of~~homes, buildings, or other structures~~;~~ or removing~~of~~
 paving material from roads ~~and~~or parking areas shall take steps
 to minimize fugitive dust from such activities. Such control may
 include watering and~~for~~ chemical stabilization or other equivalent
 methods or techniques approved by the executive secretary.~~

R307-~~12~~205-4. Road Ways.

~~4.A. Any person responsible for construction or maintenance
 of any existing road or having right-of-way easement or possessing
 the right to use the same in an actual area of nonattainment for
 particulate whose activities result in fugitive dust from such road
 shall be required to minimize fugitive dust.~~

~~—(1) When such roads have an average daily traffic volume of
 less than 150 vehicle trips per day, averaged over a consecutive 5-
 day period, fugitive dust shall be minimized by appropriate control
 techniques. Such control may include but not be limited to
 watering, chemical stabilization and/or other equivalent methods or
 techniques approved by the executive secretary.~~

~~—(2) When such roads have an average daily traffic volume of
 150 vehicle trips per day or greater, averaged over a consecutive 5
 day period, control techniques must be used which are equal to or
 better than 2-inch bituminous surface.~~

~~4.B.](1) Any person planning to construct or operate a new
 unpaved road which is anticipated to have an average daily traffic~~

volume of 150 vehicle trips per day or greater, averaged over a consecutive 5 day period, shall submit a notice of intent to construct~~(7)~~ or operate such a road to the executive secretary pursuant to ~~[R307-1-3-1]~~[R307-401]. Such notice shall include proposed action to minimize fugitive dust emissions from the road.

~~[4-C:]~~(2) The executive secretary may require persons owning, operating or maintaining any new or existing road, or having right-of-way easement or possessory right to use the same to supply traffic count information as determined necessary to ascertain whether or not control techniques are adequate or additional controls are necessary.

~~[4-D:]~~(3) Any person who ~~[through his/her operations]~~ deposits materials which may create fugitive dust on a public or private road is required to clean the road such that fugitive dust~~[as a result of his/her operations]~~ is minimized.

R307-~~[12]~~205-5. Mining Activities.

~~[5-A:]~~(1) Fugitive dust, construction activities, and roadways associated with mining activities are regulated under the provisions of ~~[this section]~~R307-205-5 and not by ~~[R307-12-3 and R307-12-4]~~R307-205-3 and 4.

~~[5-B:]~~(2) Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.

~~[5-C:]~~(3) The fugitive dust control measures to be used may include, but are not limited to:

- ~~(1)~~a) periodic watering of unpaved roads,
- ~~(2)~~b) chemical stabilization of unpaved roads,
- ~~(3)~~c) paving of roads,
- ~~(4)~~d) prompt removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface,
- ~~(5)~~e) restricting the speed of vehicles in and around the mining operation,
- ~~(6)~~f) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust,
- ~~(7)~~g) restricting the travel of vehicles on other than established roads,
- ~~(8)~~h) enclosing, covering, watering, or otherwise treating loaded haul trucks and/or railroad cars, to minimize loss of material to wind and spillage,
- ~~(9)~~i) substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion,
- ~~(10)~~j) minimizing the area of disturbed land,
- ~~(11)~~k) prompt revegetation of regraded lands,
- ~~(12)~~l) planting of special windbreak vegetation at critical points in the permit area,
- ~~(13)~~m) control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the executive secretary.
- ~~(14)~~n) restricting the areas to be blasted at any one time,
- ~~(15)~~o) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization,
- ~~(16)~~p) restricting fugitive dust at spoil and coal transfer and loading points,

~~(17)~~q) control of dust from storage piles through use of enclosures, covers, or stabilization and~~(18)~~ other equivalent methods or techniques as approved by the executive secretary, and~~(19)~~

~~(18)~~r) other techniques as determined necessary by the executive secretary.

~~[5-D:]~~(4) Any person owning and/or operating an existing mining operation in an actual area of nonattainment for particulate or an existing mining operation outside an actual area of nonattainment from which fugitive dust impacts an actual area of nonattainment for particulate shall submit plans for control of fugitive dust from such operations to the executive secretary for approval no later than September 29, 1981, 180 days after the effective date of this regulation.

R307-~~[12]~~205-6. Tailings Piles and Ponds.

~~[6-A:]~~(1) Fugitive dust, construction activities, and roadways associated with tailings piles and ponds are regulated under the provisions of ~~[this section]~~R307-205-6 and not by ~~[R307-12-3 and R307-12-4]~~R307-205-5 and 6.

~~[6-B:]~~(2) Any person owning ~~[and]~~ or operating an existing tailings operation where fugitive dust results from grading, excavating, depositing, or natural erosion or other causes in association with such operation shall take steps to minimize fugitive dust from such activities. Such controls may include but are not limited to:

- ~~(1)~~a) watering and~~(2)~~ chemical stabilization,
- ~~(2)~~b) synthetic and~~(3)~~ vegetative covers,
- ~~(3)~~c) wind breaks,
- ~~(4)~~d) minimizing the area of disturbed tailings,
- ~~(5)~~e) restricting the speed of vehicles in and around the tailings operation, and~~(6)~~
- ~~(6)~~f) other equivalent methods or techniques which may be approvable by the executive secretary.

~~[6-C:]~~(3) Any person owning ~~[and]~~ or operating an existing tailings operation in a nonattainment area for particulate or an existing mining operation outside an actual area of nonattainment from which fugitive dust impacts an actual area of nonattainment for particulate shall submit plans for control of fugitive dust from such operations to the executive secretary for approval no later than September 29, 1981, 180 days after the effective date of this regulation.

KEY: air pollution, fugitive emissions*, mining*, tailings*
~~[August 15,]~~199[5]8 **19-2-101**
19-2-104
19-2-109



Environmental Quality, Air Quality
R307-18
(Changed to R307-210)
 Stationary Sources

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE No.: 21011
 FILED: 04/22/98, 16:59
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To update incorporation by reference of federal rule.

SUMMARY: R307-18 incorporates by reference 40 CFR 60, federal requirements for certain new stationary sources of air pollution. The CFR was last amended effective March 16, 1998, with provisions for new large municipal waste combustors, and new and existing incinerators for hospital/medical/infectious waste. R307-18 is being renumbered to R307-210 to fit into the new numbering system for all R307 rules which will be published for public comment in the June 1, 1998, issue of the *Utah State Bulletin*.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 19-2-104
 FEDERAL MANDATE FOR THIS FILING: 40 CFR 60

THIS FILING INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 60, published at 62 FR 48348, effective March 16, 1998

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: Cost of permitting is covered by fees.
 - ❖LOCAL GOVERNMENTS: No change - federal requirements are already in place.
 - ❖OTHER PERSONS: No change - federal requirements are already in place.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: No change - federal requirements are already in place.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
 Air Quality
 150 North 1950 West
 Box 144820
 Salt Lake City, UT 84114-4820, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/02/98, 1:30 p.m., Room 201, Department of Environmental Quality (DEQ) Bldg., 168 North 1950 West, Salt Lake City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 07/02/98

AUTHORIZED BY: Ursula K. Trueman, Director

R307. Environmental Quality, Air Quality.**R307-~~18~~210. Stationary Sources.****R307-~~18~~210-1. Standards of Performance for New Stationary Sources (NSPS).**

The standards of performance for new stationary sources in 40 CFR 60, published at 62 FR 48348 and effective on [March 12, 1996]March 16, 1998, are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "executive secretary" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

KEY: air pollution, stationary sources*, new source review*
[September 9, 1996]199[6]8 19-2-104

Environmental Quality, Air Quality**R307-309**

**Davis, Salt Lake, and Utah Counties,
 Ogden City and Any Nonattainment
 Area for PM10: Fugitive Emissions and
 Fugitive Dust**

NOTICE OF PROPOSED RULE

(New)

DAR FILE No.: 21080
 FILED: 05/01/98, 13:37
 RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: This new rule includes provisions presently found in R307-12, as well as new provisions to prevent blowing dust from leaving the sites of storage, hauling, handling, construction and demolition activities, and from being tracked onto public roads from those activities.

SUMMARY: Section R307-309-1 sets forth applicability and definitions. Section R307-309-2 is moved without amendment from Section R307-12-2. Sections R307-309-3 and R307-309-4 specify that dust from storage, hauling, handling, construction and demolition activities shall be minimized on site. This requirement is presently found in R307-12. In addition, Sections R307-309-3 and R307-309-4 require that no dust leave the sites of these activities. The requirements of Subsection R307-309-5(1) are moved from the present Section R307-12-4.A. Subsection R307-309-5(2) requires that no dust be tracked from unpaved roads onto paved roads during construction or maintenance. These more stringent provisions are added because dust is a component of fine particulate pollution which is detrimental to human health. The mud and dust tracked onto roads is ground into very fine particles which are inhaled and remain

in human lungs. The biggest source of complaints to the Division of Air Quality is blowing dust, and local governments also receive complaints from their citizens. Wasatch Front Regional Council (WFRC) has requested that this rule be made more stringent, and the staff of the Division of Air Quality have worked with WFRC staff and Council members to draft the provisions, which are similar to those recently put into effect in the Phoenix and Las Vegas areas. These requirements are already written into the permits for I-15 reconstruction and a number of other sources.

(DAR Note: The proposed amendment to R307-12 is under DAR No. 21079 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The present cost of responding to each complaint is greater than the cost of sending out a scheduled dust patrol. Because the standard of the new rule is more specific and source operators will be more clear about what is expected, enforcement will take less time.

❖LOCAL GOVERNMENTS: Local governments already are adopting similar provisions into their local ordinances and enforcing them.

❖OTHER PERSONS: The number of affected sites is unknown, and the cost will vary depending on site characteristics and season. Individual costs are set forth under "Compliance Costs for Affected Persons."

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are a variety of ways to meet the requirements. One or several of the following measures may be needed, depending on the site, the season, and the moisture content of the soil or aggregate in use. Control methods which are cost effective for a long term site such as an aggregate operation are likely to be different from a cost effective method for a short term construction site. 1. To prevent tracking dirt onto a paved road adjacent to a site, the source could use one or more of the following measures: (a) Lay down a work surface of two to three inches of rock. The cost of 100 yard length, 24 foot width and 4 inch depth would be less than \$3,000. If the site is especially muddy, the gravel might need replacement. (b) Lay down a work surface of pavement. For the same size as above, the cost might be as much as \$9,000. (c) Install a metal cattle guard. Installation of \$15,000 and annual operating cost of \$5,000 to clean it. 2. To prevent dust spilling from haul trucks, one or more of the following measures may be needed: (a) Each truck carry a shovel, bar, and broom, and driver clean off truck and tires before leaving the site. This might take 15 minutes per truck, or less if the truck is loaded carefully. (b) Hire laborer to check and sweep trucks as they exit the site. Cost of \$10 - \$12 per hour, \$20,000 - \$25,000 maximum annually. (c) Cover loads with a tarp. This would have the added benefit of preventing windshield breakage. The most expensive option, a mechanically operated version similar to that used on convertible autos, might cost about \$7,500. There are a few in Utah which have been in operation for several years without significant maintenance costs. 3. An undercarriage and side water spray could be used to clean trucks and tires before leaving a site. Installation cost is about \$15,000 and

the annual operating cost is about \$10,000, including the cost of treating the water after use. Long term installations such as aggregate operations may find this economical. 4. Dust can be prevented from being blown from a site by a variety of measures. Watering, dust suppressants, berms, revegetation and assorted site-dependent work practices may be used.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Air Quality
150 North 1950 West
Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/06/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR Provo: City Council Chambers, 351 West Center Street, June 1, 7:00 - 9:00 p.m.; Salt Lake City: Room 101, Department of Environmental Quality (DEQ) Building, 168 North 1950 West, June 3, 6:00 - 8:00 p.m.; North Salt Lake: Orchard Elementary School, 205 East Center Street, June 2, 6:00 - 8:00 p.m.; Ogden: Weber-Morgan Health District Office, 2570 Grant Ave, June 9, 6:00 - 8:00 p.m.

THIS FILING MAY BECOME EFFECTIVE ON: 08/06/98

AUTHORIZED BY: Ursula K. Trueman, Director

R307. Environmental Quality, Air Quality.

R307-309. Davis, Salt Lake and Utah Counties, Ogden City and Any Nonattainment Area for PM10: Fugitive Emissions and Fugitive Dust.

R307-309-1. Applicability and Definitions.

(1) The provisions of R307-309 apply in Davis, Salt Lake and Utah Counties, Ogden City, and any nonattainment area for PM10.

(2) The following definitions apply throughout R307-205: "Material" means sand, gravel, soil, minerals or other matter which may create fugitive dust.

"Road" means any public or private road.

R307-309-2. Fugitive Emissions.

Fugitive emissions from any source shall not exceed 20% opacity.

R307-309-3. Storage, Hauling and Handling of Aggregate Materials.

(1) Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall

minimize fugitive dust from such an operation on the site and prevent fugitive dust from leaving the site of such an operation.

(2) Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall prevent material from being deposited onto any paved road other than a designated deposit site.

(3) Any person owning or operating an existing material storage, handling or hauling operation shall submit plans for control of fugitive dust from such operations to the executive secretary for approval.

R307-309-4. Construction and Demolition Activities.

(1) Any person engaging in clearing or leveling of land greater than one-quarter acre in size, earthmoving, excavation, or movement of trucks or construction equipment over cleared land greater than one-quarter acre in size or access haul roads shall take steps to minimize fugitive dust from such activities on site and shall prevent fugitive dust from such activities from leaving the site.

(2) The owner or operator of land areas greater than one-quarter acre in size that have been cleared or excavated shall take measures to prevent fugitive particulate matter from becoming airborne and leaving the site.

(3) Any person engaging in demolition activities including razing homes, buildings, or other structures or removing paving material from roads or parking areas shall take steps to minimize fugitive dust from such activities on site and prevent fugitive dust from leaving the site.

(4) Any person engaging in clearing or leveling of land, earthmoving, excavating, or moving trucks or construction equipment over cleared land or access haul roads shall prevent material from being deposited onto any paved road other than a designated deposit site.

R307-309-5. Road Ways.

(1) Any person responsible for construction or maintenance of any existing road or having right-of-way easement or possessing the right to use the same whose activities result in fugitive dust from such road shall be required to minimize fugitive dust.

(a) When such roads have an average daily traffic volume of less than 150 vehicle trips per day, averaged over a consecutive 5-day period, fugitive dust shall be minimized.

(b) When such roads have an average daily traffic volume of 150 vehicle trips per day or greater, averaged over a consecutive 5 day period, control techniques must be used which are equal to or better than 2-inch bituminous surface.

(2) Any person responsible for construction or maintenance of any new or existing unpaved road shall prevent the deposit of material from the unpaved road onto any intersecting paved road during construction or maintenance.

KEY: air pollution, dust*
1998

19-2-101
19-2-104
19-2-109



Environmental Quality, Air Quality

R307-413

Exemptions and Special Provisions

NOTICE OF PROPOSED RULE
(New)

DAR FILE NO.: 21010
FILED: 04/22/98, 16:55
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The rule is re-written to bring it into alignment with actual practice, and is moved from R307-6.

SUMMARY: R307-6 was promulgated in 1990 so that the public can be protected from emissions of hazardous air pollutants emitted during underground storage tank cleanups, while simplifying the permitting process to allow small air stripping and soil venting projects to go forward in a timely manner. In practice, there has been an informal process of screening soil venting projects to be sure that small emissions are allowed to proceed quickly while those with larger emissions of hazardous air pollutants are identified and controlled. In 1995-97, the Air Quality Board adopted rules to simplify the approval order process for all small sources of air pollution, and set up a screening process to identify projects which may adversely affect human health. (These rules are found in Sections R307-1-3.1.7 and R307-1-3.7.) This revision brings air stripping and soil venting projects into the same system as all other small projects. R307-6 requires estimating total hydrocarbons; R307-413, which is replacing R307-6, requires estimates only of those hydrocarbons which are volatile organic compounds. R307-6 allows exemption from the approval order process if emissions of benzene are less than two pounds in a 24 hour period; R307-413 applies to emissions of all hazardous air pollutants. Small soil venting projects generally have emissions of one pound of all hazardous air pollutants in 24 hours. The test method remains an updated version of the Environmental Protection Agency (EPA) document SW-846, a carbon adsorption unit is still exempt, the reporting deadline remains one month after the sample is taken, and the sampling interval remains 28-31 days. A new section is added to exempt small soil aeration projects; under R307-6, these projects would be required to obtain an approval order. The rule is being re-numbered from R307-6 to R307-413 in order to fit into the new arrangement of Air Quality rules which will be published for public comment in the June 1 issue of the *Bulletin*.

(DAR Note: The proposed repeal to R307-6 is under DAR No. 21009 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: No change.
- ❖LOCAL GOVERNMENTS: No change.
- ❖OTHER PERSONS: No change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No change.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
 Air Quality
 150 North 1950 West
 Box 144820
 Salt Lake City, UT 84114-4820, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmill@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/02/98, 1:30 p.m., Room 201, Department of Environmental Quality (DEQ) Building, 168 North 1950 West, Salt Lake City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 07/02/98

AUTHORIZED BY: Ursula K. Trueman, Director

R307. Environmental Quality, Air Quality.

R307-413. Exemptions and Special Provisions.

R307-413-8. De minimis Emissions From Air Strippers and Soil Venting Projects.

(1) An owner or operator of an air stripper or soil venting system will not be required to obtain an approval order under R307-1-3.1 to conduct remediation of contaminated groundwater or soil, if the owner or operator submits written documentation of the following to the executive secretary prior to beginning the remediation project:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-1-3.1.7.A(1)(c), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-1-3.7.3.D.

(2) After beginning the soil remediation project, the owner or operator shall submit emissions information to the executive secretary to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in (1) are not exceeded. Emissions estimates of volatile organic compounds and hazardous air pollutants shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8020 or #8021 or other test or monitoring method approved by the executive secretary. Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the executive secretary within one month of sampling. The test samples shall be drawn on intervals of

no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the executive secretary.

(3) The following control devices do not require an approval order under R307-1-3.1 when used in relation to an air stripper or soil venting project applicable to this rule:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-413-9. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not required to obtain an approval order under R307-1-3.1 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits written documentation of the following to the executive secretary prior to beginning the remediation project:

(1) the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from a given project are less than the de minimis emissions listed in R307-1-3.1.7(c);

(2) the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-1-3.7.3.D; and

(3) the location of the remediation and where the remediated material originated.

**KEY: waste oil*, permits, exemption*, de minimis*
1998**

19-2-104



Environmental Quality, Air Quality
R307-840
 Lead-Based Paint Accreditation,
 Certification and Work Practice
 Standards

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21016

FILED: 04/27/98, 15:42

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The new rule implements S.B. 118 from the 1998 legislative session, establishing a lead-based paint certification program in Utah. Upon final adoption of the rule, the state will seek authorization from the Environmental Protection Agency (EPA) to administer and enforce the standards, regulations and other requirements established under the Toxic Substances Control Act, Section 402.

(DAR Note: S.B. 118 is found at 1998 Utah Laws 177, and was effective May 4, 1998.)

SUMMARY: The rule specifies purpose and applicability in Section R307-840-1. Section R307-840-2 incorporates by reference the federal provisions with appropriate substitutions and modifications for state enforcement. As provided in Subsection 63-38-3.2(5)(a), Section R307-840-3 sets forth a fee schedule for the first year of the program. In future years, fees will be determined by the Legislature. Nothing in the rule requires anyone to remove lead-based paint; the rule specifies training and work practices for a non-owner doing such work.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 19-2-104

THIS FILING INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 745.223, 225(a) through (g) and (i), 745.226 (a) through (h), 745.227, and 745.233. Published August 29, 1996

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** For the Division of Air Quality, fees will cover part of the cost of implementation and a federal grant will cover the remainder. Costs may be increased for any state-owned child-occupied structures built prior to 1978 in which lead-based paint abatement activities are undertaken, as they would be if the program were federally-enforced.

❖**LOCAL GOVERNMENTS:** No cost, unless a government entity decides to inspect, abate, or remove lead paint in its own structures. If abatement is done, costs will be similar, whether the program is administered by the state or by the federal government.

❖**OTHER PERSONS:** No cost to individuals, unless a person decides to abate lead paint. The cheapest method of abatement is painting over the lead-based paint with a special product which costs 2 - 4 times as much as regular paint. Individuals and companies conducting lead abatement activities are required to pay for training and certification (\$150 - 500 per course). All costs will be similar to costs if the program were enforced by the federal government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost to individuals, unless a person decides to abate lead paint. The cheapest method of abatement is painting over the lead-based paint with a special product which costs 2 - 4 times as much as regular paint. Individuals and companies conducting lead abatement activities are required to pay for training and certification (\$150 - 500 per course). All costs will be similar to costs if the program were enforced by the federal government.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
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150 North 1950 West
Box 144820

Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/04/98, 1:30 p.m., Room 201, Department of Environmental Quality (DEQ) Bldg., 168 North 1950 West, Salt Lake City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 07/02/98

AUTHORIZED BY: Ursula K. Trueman, Director

R307. Environmental Quality, Air Quality.
R307-840. Lead-Based Paint Accreditation, Certification and Work Practice Standards.
R307-840-1. Purpose and Applicability.

(1) Rule R307-840 establishes procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This rule also requires that, except as outlined in (2), all lead-based paint activities, as defined in this rule, must be performed by certified individuals and firms.

(2) R307-840 applies to all individuals and firms who are engaged in lead-based paint activities as defined in R307-840-2, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(3) Each department, agency, and instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of R307-840 regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(4) While Rule R307-840 establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in R307-840 requires that the owner or occupant undertake any particular lead-based paint activity.

R307-840-2. Definitions.

Definitions found in 40 CFR 745.223, in effect as of April 21, 1998, are hereby adopted and incorporated by reference.

R307-840-3. Accreditation, Certification and Work Standards: Target Housing and Child-Occupied Facilities.

(1) The following requirements, in effect as of April 21, 1998, are adopted and incorporated by reference, with the substitutions found in (2):

(a) 40 CFR 745.225(a) through (g) and (i), 745.226 (a) through (h), 745.227, and 745.233.

(2) Substitutions.

(a) Substitute "Executive Secretary" for all references to "EPA" with the following exceptions:

(i) Definition of "Recognized laboratory" as found in Sec. 745.223.

(ii) Sec. 745.225(b)(1)(iii), Sec. 745.225(b)(1)(iv), Sec. 745.225(c)(2)(ii), Sec. 745.225(c)(10), Sec. 745.225(e)(5)(iii), and Sec. 745.225(e)(5)(iv).

(iii) The last reference to EPA in Sec. 745.226 (a)(1)(ii) and the second reference to EPA in Sec. 745.226(d)(1).

(iv) The first three references to EPA in Sec. 745.227(a)(3), Sec. 745.227(a)(4), the second reference to EPA in Sec. 745.227(e)(4), and Sec. 745.227(f)(2).

(v) Substitute "Executive Secretary or Executive Secretary's authorized representative" for references to "EPA" in Sec. 745.225(c)(12), Sec. 745.225(f)(4), and Sec. 745.225(i)(1).

(b) Substitute "Guidance on Identification of Lead-Based Paint Hazards" (Federal Register, Vol. 60, No. 175, Pgs. 47248-57) for all references to "TSCA section 403".

(3) Modifications.

(a) Change the date in Sec. 745.227(a)(1) to August 30, 1999.

(b) Modify Sec. 745.225(b)(1)(iii) by deleting the statement, "or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part."

(c) Modify Sec. 745.225(b)(1)(iv) by deleting the statement, "or training materials approved by an authorized State or Indian Tribe".

(d) Modify Sec. 745.225(c)(2)(ii) by including the statement, "Executive Secretary-accredited," before the statement "EPA-accredited".

(e) Modify Sec. 745.225(e)(5)(iii) by deleting the statement, "or training materials approved by a State or Indian Tribe that has been authorized by EPA under subsection 745.324 to develop its refresher training course materials."

(f) Modify Sec. 745.225 (e)(5)(iv) by deleting the statement, "or training materials approved by an authorized State or Indian Tribe".

(g) Modify Sec. 745.226 (a)(1)(ii) by including the statement, "EPA or" after the word "from".

(h) Modify Sec. 745.227 (a)(3) by deleting the statement, "Regulations, guidance, methods, or protocols issued by States and Indian Tribes that have been authorized by EPA:".

R307-840-4. Lead-Based Paint Fees.

Utah lead-based paint fees are set forth in the table below.

TABLE

Lead-Based Paint Regulations Packet (Printed Copy)	\$5.00
Lead-Based Paint Regulations Packet (Computer Disk)	\$3.00
Specialized Computer Generated Information (per hour)	\$50.00

Certified Lead-Based Paint Firm (initial year)	\$500.00
Certified Lead-Based Paint Firm (subsequent years)	\$250.00
Certified Lead-Based Paint Abatement Worker, Inspector, Project Designer, Risk Assessor, or Supervisor (initial year)	\$100.00
Certified Lead-Based Paint Abatement Worker, Inspector, Project Designer, Risk Assessor, or Supervisor (subsequent years)	\$75.00
Lead-Based Paint Course Provider Accreditation	\$500.00
Lead-Based Paint Abatement Project Notification Review	\$500.00

KEY: air pollution, paint*, lead-based paint* 1998

19-2-104



Environmental Quality, Drinking Water
R309-352
Drinking Water Capacity Development
Funding

NOTICE OF PROPOSED RULE

(New)

DAR FILE No.: 21027

FILED: 04/29/98, 16:24

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Division of Drinking Water anticipates receiving money through the federal Safe Drinking Water Act to fund Capacity Development programs in the state. This rule establishes the process by which counties may apply for and receive funds from the Division.

SUMMARY: This rule is intended to assist small public water systems by funding county wide regional water management plans, including facility plans, and regional options which will allow each water system to comply with the 1996 Reauthorized Safe Drinking Water Act.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Subsection 19-4-104(1)(a)(v)

FEDERAL MANDATE FOR THIS FILING: Section 1420 of the 1996 Reauthorized Federal Safe Drinking Water Act, 42 U.S.C. 300f et seq.

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None.
- ❖ LOCAL GOVERNMENTS: None.
- ❖ OTHER PERSONS: \$ 625,000 savings to small public drinking water systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality

Drinking Water
 150 North 1950 West
 PO Box 144830
 Salt Lake City, UT 84114-4830, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
 Kimball Wallace at the above address, by phone at (801) 536-0048, by FAX at (801) 536-4211, or by Internet E-mail at kwallace@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/12/98, 1:00 p.m., Wasatch Co. Court House, Heber City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Kevin W. Brown, Director and Executive Secretary of Drinking Water Board

R309. Environmental Quality, Drinking Water.

R309-352. Drinking Water Capacity Development Funding.

R309-352-1. Authority and Purpose.

(1) Under authority granted in Section 19-4-104(1)(a)(v), the Drinking Water Board adopts this rule governing the allotment of federal funds to public water systems to assist them to comply with the Federal 1996 Reauthorized Safe Drinking Water Act (SDWA).

(2) The SDWA makes certain federal funds available to states, section 1452(k)(2)(C) to provide assistance to any public water system as part of a capacity development strategy developed and implemented in accordance with section 1420(c) to ensure all new public water systems will be able to comply with the SDWA, to enhance existing public water systems' capability to comply the SDWA, and determine which public water systems applying for financial assistance are eligible to use the State Revolving Funds.

(3) This rule sets forth the procedures that the Drinking Water Board will use to determine the amount of federally funded assistance that public water systems will receive to implement the capacity development strategy.

R309-352-2. Definitions.

(1) "Capacity Development" means technical, managerial, and financial capabilities of the water system to plan for, achieve, and maintain compliance with applicable drinking water standards.

(2) "Regional Water Management Plans" means a county wide water plan, administered locally by a coordinator, who facilitates the input of representatives of each public water system in the county with a selected consultant, to determine how each public water system will either collectively or individually comply with source protection, operator certification, monitoring including consumer confidence reports, capacity development including technical, financial and managerial aspects, environmental issues, available funding and related studies.

(3) "Small Water System" means a water system with less than 3,300 people being served.

(4) "Public Water System" means a system providing water for human consumption and other domestic uses, which has at least 15

service connections or serves an average of at least 25 individuals daily at least 60 days out of the year.

R309-352-3. Funds Availability - Time Period.

(1) The Drinking Water Board has authorized five (5%) percent of the 1997 federal SRF grant to provide assistance to any public water system as part of the capacity development strategy. Upon this rules effective date, \$ 625,000 will be provided to the counties through their Associations of Governments (AOG) to fund the regional water management plans. The regional water management plans shall be completed one year from the date funds are made available to each county.

(2) Any funds set aside for the purposes described in this rule and not used at the option of a given county by September 1, 1998, shall be made available to other counties, as requested and approved by the Drinking Water Board.

(3) In addition to the federal funds from the SDWA, the State Department of Community and Economic Development has made \$ 350,000 available to counties through the Division of Community Development. It is anticipated that \$ 50,000 would be used in each of the seven AOG's. In order to use the Community Development funds the county must meet the applicable low and moderate income levels.

R309-352-4. Funding Allocations.

(1) Counties are eligible to receive a portion of the federal funds according to their needs, such as the number and deficiencies (including source, infrastructure and management) of small water systems, amount of undeveloped portions of the county, and required funding to facilitate on-going studies. The Division of Drinking Water has designated each county as having either a very complex, complex, standard, minor, or no need relative to small water system planning. The cost to complete a standard planning need and a minor planning need would be 80% and 33% respectively of a complex need. A very complex planning need is equivalent to 200% of a complex need. The following designations have been approved by the Drinking Water Board:

TABLE 1

Very Complex	Complex	Standard	Minor	No Need
Summit	Beaver	Daggett	Piute	Salt Lake
	Box Elder	Emery	Utah	Davis
	Cache	Grand	Wayne	Weber
	Carbon	Morgan		
	Duchesne	Rich		
	Garfield	San Juan		
	Iron			
	Juab			
	Kane			
	Millard			
	Sanpete			
	Sevier			
	Tooele			
	Uintah			
	Wasatch			
	Washington			

(2) Based on the above designations the following amounts of money will be granted to each Association of Governments, who in turn will allocate the funds to each county:

TABLE 2

Region	Proposed	
	Funding Available 1998 (fy 97 grant)	Funding Available 1999 (fy 98 grant)
Bear River	\$ 123,185	\$ 41,058
Mountainland	\$ 130,920	\$ 43,640
Southeast	\$ 133,672	\$ 44,560
Tri County	\$ 141,246	\$ 22,997
Wasatch Front	\$ 45,527	\$ 41,649
5 County	\$ 209,675	\$ 69,896
6 County	\$ 190,775	\$ 61,200
Funds Available	\$ 975,000	\$ 325,000

R309-352-5. Eligibility Criteria and Application for Funds.

(1) In order to be eligible for these funds, a small public water system must be a community water system, or a non-transient, non-community water system that is not owned/operated by a federal or state government agency.

(2) Application for Funds - In order to apply for and receive funds, each county's governing board must (a) appoint an administrator to implement the regional plan and (b) give input and concur with the funding level allotted to each county through the Association of Governments. After each county has completed this requirement, the Director of the Association of Government, with input from Division staff shall prepare a letter of application to the Drinking Water Board.

KEY: drinking water, funding, regionalization, capacity development
1998 **19-4-104**

Environmental Quality, Radiation
Control

R313-32

Medical Use of Radioactive Material

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21088

FILED: 05/01/98, 16:00

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: A review of a recent filing for R313-32 showed that some text which was to be added to the rule and some text which was to be deleted was not processed as desired. Since the changes that were intended are substantive, this filing corrects the errors.

SUMMARY: Subsection R313-32-33(1)(c) is being changed to delete text which is no longer needed and to add necessary text regarding misadministration of radioactive material to an individual. Subsection R313-32-930(1)(c) is being changed

to correct the name of the Royal College of Physicians and Surgeons of Canada.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 19-3-104 and 19-3-108

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Radiation Control
State of Utah Office Park, Bldg. 2
168 North 1950 West
PO Box 144850
Salt Lake City, UT 84114-4850, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Craig W. Jones at the above address, by phone at (801) 536-4250, by FAX at (801) 533-4097, or by Internet E-mail at cjones@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 08/11/98

AUTHORIZED BY: William J. Sinclair, Executive Secretary

R313. Environmental Quality, Radiation Control.

R313-32. Medical Use of Radioactive Material.

R313-32-33. Notifications, Reports and Records of Misadministrations.

(1) For a misadministration:

(a) the licensee shall notify the Executive Secretary by telephone no later than the next calendar day after discovery of the misadministration.

(b) the licensee shall submit a written report to the Executive Secretary within 15 days after discovery of the misadministration. The written report shall include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the individual who received the misadministration; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not; and if there was notification, what information was provided. The report must not include the individual's name or any other information that could lead to identification of the individual. To meet the requirements of R313-32-33, the notification of the individual receiving the misadministration may be made instead to that individual's responsible relative or guardian, when appropriate.

(c) the licensee shall notify the referring physician ~~[of the affected patient and the patient,]~~ and also notify the individual receiving the misadministration of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the individual receiving the misadministration cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(d) if the individual was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the individual by sending either:

- (i) a copy of the report that was submitted to the Executive Secretary; or
- (ii) a brief description of both the event and the consequences as they may affect the individual, provided a statement is included that the report submitted to the Executive Secretary can be obtained from the licensee.

(2) The licensee shall retain a record of each misadministration for five years. The record shall contain the names of all individuals involved (including the prescribing physician, allied health personnel, the individual who received the misadministration, and that individual's referring physician, if applicable), the individual's social security number or other identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the individual, improvements needed to prevent recurrence, and the actions taken to prevent recurrence.

(3) Aside from the notification requirement, nothing in R313-32-33 affects any rights or duties of licensees and physicians in relation to each other, to individuals receiving misadministrations, or to that individual's responsible relative or guardian.

R313-32-930. Training for Therapeutic Use of Unsealed Radioactive Material.

Except as provided in R313-32-970, the licensee shall require the authorized user of radiopharmaceuticals in R313-32-300 to be a physician who:

- (1) is certified by:
 - (a) the American Board of Nuclear Medicine;
 - (b) the American Board of Radiology in radiology, therapeutic radiology, or radiation oncology;
 - (c) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or
 - (d) the American Osteopathic Board of Radiology after 1984;
- or

(2) has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:

- (a) 80 hours of classroom and laboratory training that includes:
 - (i) radiation physics and instrumentation;
 - (ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology; and

(b) supervised clinical experience under the supervision of an authorized user at a medical institution that includes:

(i) use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten individuals; and

(ii) use of iodine-131 for treatment of thyroid carcinoma in three individuals.

KEY: radioactive material, radiopharmaceutical, brachytherapy, nuclear medicine
[January 23,] August 11, 1998 **19-3-104**
Notice of Continuation May 1, 1997 **19-3-108**



**Environmental Quality, Solid and
 Hazardous Waste
 R315-15-11
 Closure**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21026

FILED: 04/29/98, 09:50

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The proposed changes to Sections R315-15-11.3 and R315-15-11.4 clarify the types of permitted used oil facilities to which the Closure Rule applies.

SUMMARY: The permitted used oil facilities affected by the Closure Rule are used oil transfer, off-specification burning, and processing/re-refining facilities. The proposed changes to Sections R315-15-11.3 and R315-15-11.4 list these specific facilities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 19-6-7

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** No change, due to the fact that all permitting and enforcement practices remain the same.

❖**LOCAL GOVERNMENTS:** No change, due to the fact that all permitting and enforcement practices remain the same.

❖**OTHER PERSONS:** A savings of unknown quantity may be realized by used oil facilities that are not transfer facilities, off-specification burners, or processors/re-refiners.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for used oil transfer, off-specification burning, or processing/re-refining facilities will not change, because closure requirements remain the same. Other used oil

facilities will not experience any compliance costs relating to this change.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Solid and Hazardous Waste
Fourth Floor, Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Alex Hildebrand at the above address, by phone at (801) 538-7021, by FAX at (801) 538-6715, or by Internet E-mail at ahildebr@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Dennis R. Downs, Director

**R315. Environmental Quality, Solid and Hazardous Waste.
R315-15. Standards for the Management of Used Oil.
R315-15-11. Closure.**

11.1 The owner or operator of a used oil collection, aggregation, transfer, processing/re-refining, or off-specification used oil burning facility shall reclaim the site of the operation to a post operational land use in a manner that:

- (a) Minimizes the need for further maintenance;
- (b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated run-off, or used oil decomposition products to the ground or surface waters, or to the atmosphere; and
- (c) Complies with the closure requirements of this section or supplies evidence to the Executive Secretary demonstrating a closure mechanism meeting the requirements of R315-7-15 or R315-8-8.

11.2 CLOSURE PLAN

(a) Written plan. The owner or operator of a used oil transfer, off-specification burner, or processing/re-refining facility shall have a written closure plan. The plan shall be submitted to the Executive Secretary as part of the permit application.

(b) Content of plan. The plan shall identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan shall include, at least:

- (1) A description of how each used oil management unit at the facility will be closed.
- (2) A description of how final closure of the facility will be conducted. The description shall identify the maximum extent of the operations which will be closed during the active life of the facility.
- (3) An estimate of the maximum inventory of used oil to be stored on-site at any one time during the life of the facility and a

detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the off-site used oil facilities to be used, if applicable.

(4) A detailed description of the steps needed to remove or decontaminate all used oil residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy closure.

(5) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure standards.

(6) A closure cost estimate and a mechanism for reclamation surety to cover the cost of closure.

11.3 TIME ALLOWED FOR CLOSURE

Within 90 days after receiving the final volume of used oil, the owner or operator of a used oil transfer, off-specification burning, or processing/re-refining facility shall ~~[dispose of all used oil in accordance with the]~~begin implementing the facility's approved closure plan~~[-and implement closure].~~

11.4 CERTIFICATION OF CLOSURE

Within 60 days of completion of closure the owner or operator of a used oil transfer, off-specification burning, or processing/re-refining facility shall submit to the Executive Secretary, by registered mail, a certification that the used oil facility has been closed in accordance with the specifications in the approved closure plan. The certification shall be signed by the owner or operator and by an independent registered professional engineer.

KEY: hazardous waste, used oil*
~~[October 16, 1997]~~June 16, 1998

19-6-704



**Health, Health Care Financing,
Coverage and Reimbursement Policy**

R414-1

Utah Medicaid Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 20998

FILED: 04/16/98, 14:50

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To bring the rule current with addition of suggestions from various sources.

SUMMARY: This amendment adds a definition of "medically necessary", adds an option to cover certain non-covered services in Subsection R414-1-6(2)(dd), adds requirements of providers and clients in Subsections R414-1-13(2), R414-

1-13(3), and R414-1-13(4), and updates Sections R414-1-12 and R414-1-19.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 26-1-5, 26-18-2.1, and 26-18-2.3

FEDERAL MANDATE FOR THIS FILING: Title XIX of the Social Security Act

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: May incur costs with option to cover certain non-covered services on a case by case basis.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
Box 142906
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Blake Anderson at the above address, by phone at (801) 538-9925, by FAX at (801) 538-6099, or by Internet E-mail at banderso@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

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R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

- (a) who are otherwise eligible for Medicaid and who meet the financial eligibility requirements for AFDC, SSI, or an optional State supplement or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
- (b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "Department" means the Department of Health.

(7) "Director" means the director of the Division.

(8) "Division" means the Division of Health Care Financing within the Department.

(9) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

- (a) placing the patient's health in serious jeopardy;
- (b) serious impairment to bodily functions;
- (c) serious dysfunction of any bodily organ or part; or
- (d) death.

(10) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(11) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(12) "Executive Director" means the executive director of the Department.

(13) "InterQual" means the InterQual Medical Review Criteria and System, a comprehensive, clinically based, patient focused medical review criteria and system developed by InterQual Inc.

(14) "Medicaid agency" means the Department of Health.

(15) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(16) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(17) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(18) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(19) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(20) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program.

(21) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

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R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

- (a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;
- (b) outpatient hospital services and rural health clinic services;
- (c) other laboratory and x-ray services;
- (d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;
- (e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;
- (f) family planning services and supplies for individuals of child-bearing age;
- (g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;
- (h) podiatrist's services;
- (i) optometrist's services;
- (j) psychologist's services;
- (k) interpreter's services;
- (l) home health services;
- (i) intermittent or part-time nursing services provided by a home health agency;
- (ii) home health aide services by a home health agency; and
- (iii) medical supplies, equipment, and appliances suitable for use in the home;
- (m) private duty nursing services for children under age 21;
- (n) clinic services;
- (o) dental services;
- (p) physical therapy and related services;
- (q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;
- (r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;
- (s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;
- (t) services for individuals age 65 or older in institutions for mental diseases:
 - (i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;
 - (ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and
 - (iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;
- (u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

- (v) inpatient psychiatric facility services for individuals under 22 years of age;
- (w) nurse-midwife services;
- (x) family or pediatric nurse practitioner services;
- (y) hospice care in accordance with section 1905(o) of the Social Security Act;
- (z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;
- (aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;
- (bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and
- (cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:
 - (i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;
 - (ii) transportation services;
 - (iii) skilled nursing facility services for patients under 21 years of age;
 - (iv) emergency hospital services; and
 - (v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.
- (dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:
 - (i) it is medically necessary and more appropriate than any Medicaid covered service; and
 - (ii) it is more cost effective than any Medicaid covered service.

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R414-1-12. Utilization Review.

(1) In order to approve or deny payment of claims, the Medicaid agency shall use InterQual to determine medical necessity and appropriateness of services. The InterQual Medical Review Criteria and System, published by InterQual, Inc., January, 1997 edition, 293 Boston Post Road West, Suite 180, Marlborough, MA, 07152, which is adopted and incorporated by reference in this rule.

(2) The standards in the InterQual document shall not apply to services that are:

- (a) excluded as a Medicaid benefit by rule;
- (b) provided in an intensive physical rehabilitation center as described in R414-2B; or
- (c) organ transplant services as described in R414-10A. In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the[AH] requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services

~~under the Utah Medicaid Program] are met with respect to agreements between the Medicaid agency and each provider furnishing services under the plan].~~

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

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R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan ~~are~~ shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency ~~meets~~ shall adhere to all timeliness requirements of 42 CFR ~~Part~~ 435.911 ~~[-Subpart J]~~, for processing applications, determining eligibility, and ~~furnishing~~ approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

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R414-1-21. Out-of-state Services.

Medicaid services ~~are~~ shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

.....

KEY: medicaid

~~[November 13, 1997]~~8

26-1-5

Notice of Continuation May 1, 1997

26-18-1



Health, Health Systems Improvement,
Emergency Medical Services

R426-1

Ambulance Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21034

FILED: 04/30/98, 15:21

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Bureau has been performing criminal background checks on all certifying and recertifying Emergency Medical Technicians (EMTs) since July 1996. At that time, the Bureau adopted a protocol as to what actions would result from specific criminal acts. This rule change would adopt the protocol into rule form. There are also a number of house keeping changes.

SUMMARY: The proposed change requires the department to conduct criminal background checks on all certifying and recertifying Emergency Medical Technicians (EMTs). The proposed changes delineate what actions the department will take for specific criminal histories. The proposed change also makes it necessary for EMTs to notify the department within 30 days of their arrest, and it allows the department to decertify or suspend certification or place a person on probation for any of the violations. The change will make it mandatory for an applicant to put their social security number on their application. Defibrillation is now part of the Basic EMT curriculum and the proposed change will delete reference to defibrillation as a separate module.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Title 26, Chapter 8

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None.

❖ LOCAL GOVERNMENTS: None.

❖ OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Systems Improvement,
Emergency Medical Services
Cannon Health Building
288 North 1460 West
PO Box 142004
Salt Lake City, UT 84114-2004, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Leslie Johnson at the above address, by phone at (801) 538-6292, by FAX at (801) 538-6808, or by Internet E-mail at ljohnso@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Rod L. Betit, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-1. Ambulance Rules.

R426-1-2. Definitions.

As used in rule R426-1:

(1) Advanced life Support Personnel means Emergency Medical Technicians or other persons certified by the Department, in accordance with R426-1, who provide advanced life support.

(2) Advanced Life Support means an advanced level of pre-hospital and inter-hospital emergency care that includes basic life support functions including cardiopulmonary resuscitation (CPR) plus some or all of the following techniques or procedures: cardiac monitoring, manual cardiac defibrillation, ~~[telemetered electrocardiography]~~ administration of specific medications, drugs, and solutions, use of adjunctive medical devices, trauma care, and other techniques and procedures authorized by the committee.

(3) Agency means any Department, division, board, council, committee, authority, or agency of the state of Utah, or any of its political subdivisions.

(4) Ambulance means any privately or publicly owned land vehicle designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated for transportation upon the streets or highways, in this state of individuals who are sick, injured, wounded, or otherwise incapacitated or helpless.

(5) Ambulance Service means transportation and care of patients by ambulance.

(6) Basic Life Support means prehospital and interhospital emergency care which includes some or all of the techniques and procedures taught in a Department-approved Emergency Medical Technician-basic training course.

(7) Basic Life Support Personnel means Emergency Medical Technicians, emergency medical care first responders and other certified persons as specified by the committee who are engaged in the provision of basic life support.

(8) EMS Committee means the State Emergency Medical Services (EMS) Committee.

(9) Department means the Utah Department of Health.

(10) Director means the Director of the Department of Health.

(11) Emergency Medical Technician-Basic (EMT) means an individual who has completed a basic training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-1 in accordance with his level of training.

(12) Emergency Medical Technician-Intermediate (EMT-I) means an individual who has completed an advanced life support training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-1 in accordance with his level of training.

(13) Advanced Life Support Training Module means a skill enhancement training program developed by the Department and approved by the committee for use ~~[of] by EMTs [and EMT-I]s as specified under R426-1~~. The [M] module[s] currently approved is[are]:

~~—(a)—~~ IV Infusion, with modular certification identified as IV, which includes pediatric vascular access.

~~—(b)—~~ Defibrillation, including recognition of ventricular fibrillation and manual or automatic defibrillation with modular certification identified as D/(Manual or Automatic).

~~]~~ (14) EMT-Advanced means an EMT-I or an EMT with IV ~~[or D]~~ certification.

(15) EMT-Paramedic (EMT-P) means an Emergency Medical Technician (EMT) who has completed an advanced life support training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-3.

(16) License means the authorization issued by the Department to a person to provide ambulance service in the state.

(17) License Officer means the Director of the Department of Health or his designee.

(18) Medical Control means direction and advice provided by medical personnel at a designated medical facility to pre-hospital basic or advanced life support personnel by radio or telephonic communications.

(19) Net income means the sum of net service revenue, plus other operating revenue and subsidies of any type, less operating expenses, interest expense, and income tax expense.

(20) Total assets means one-half of the assets at the beginning of the ambulance service fiscal year, plus one-half of the assets at the end of the fiscal year.

(21) Net service revenue means gross charges less adjustments to recognize the difference, if any, between the established rate that was charged by the ambulance service, and the amounts paid, or to be paid, by third party payors such as Worker's Compensation, Medicare, Medicaid, Blue Cross or other insurance carriers, where the ambulance service accepts the amount of the payment by the third party as full payment.

(22) Patient means an individual who, as the result of illness or injury, needs immediate medical attention, whose physical or mental condition presents an imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition.

(23) Permit means the authorization issued by the Department in respect to an ambulance used or to be used to provide ambulance service in the state.

(24) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind.

(25) Resource Hospital means a facility designated by the EMS Committee which assumes medical leadership and medical control for the provision of advanced life support services in a specified geographical area.

R426-1-5. Personnel.

(1) ~~[Staffing of ambulances—]~~ Ground [A] ambulances, while providing ambulance services, shall have the following minimum complement of personnel who shall meet all requirements as outlined in ~~[R426-1]~~ this Ambulance Rule.

(a) ~~[Ground ambulances~~ —(i)— Two attendants, each of whom is an Emergency Medical Technician, EMT-Paramedic, licensed medical doctor or registered nurse under Title 58, and

(b) A driver, 18 years of age or older, who is the holder of a valid driver's license. If the driver is also an EMT, EMT-I, EMT-Paramedic, licensed medical doctor or registered nurse under Title 58, the driver shall qualify as one of the two attendants required.

(c) Ambulance services authorized by the Department to provide advanced life support shall assure that at least one EMT-Advanced, EMT-Paramedic, nurse, or physician responds on each call.

(2) ~~[Applications - Ambulance attendant and attendant drivers:]~~An ~~[application to function as an ambulance attendant or attendant]~~applicant for basic EMT or ambulance driver shall provide the information required on the application, including his social security number, ~~[contain the following:~~

- ~~— (a) The applicant's full name and current address;~~
- ~~— (b) The applicant's age, height, color of eyes and hair;~~
- ~~— (c) The applicant's Emergency Medical Technician certification level and number;~~
- ~~— (d) The applicant's previous experience as an ambulance attendant or driver;~~
- ~~— (e) Whether the applicant's EMT certification or drivers license has been suspended or revoked in any jurisdiction and if so for what cause;~~
- ~~— (f) Whether the applicant has ever been convicted of a felony, a misdemeanor or an act of moral turpitude, when, where, and for what cause;~~
- ~~— (g) Other information as the Department shall deem necessary to determine the applicant's qualifications.];~~

(3) The Department has a duty to exclude from EMT certification an individual who may pose an unacceptable risk to public health and safety, by virtue of his criminal history. The Department will conduct a background check on each individual who certifies or recertifies as an EMT.

(a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification by individuals convicted of the following crimes:

- (i) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.
- (ii) Sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person.
- (iii) Abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility.
- (iv) Crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnaping, robbery of any degree; or arson; or attempts to commit such crimes.

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

- (i) Conviction of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole.
- (ii) Conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) Crimes of violence against persons, such as assault

(B) Crimes defined as domestic violence under Section 77-36-1; and.

(C) Crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;

(D) Crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department shall deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

- (i) The seriousness of the crime.
- (ii) Whether the crime relates directly to the skills of prehospital care service and the delivery of patient care.
- (iii) Amount of time that has elapsed since the crime was committed.
- (iv) Whether the crime involved violence to or abuse of another person.
- (v) Whether the crime involved a minor or a person of diminished capacity.
- (vi) Whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust.
- (vii) Total number of arrests and convictions.
- (viii) Whether the applicant was truthful regarding the crime on his/her application.

(d) Certified EMS personnel must notify the Department of any arrest or conviction. The Department may suspend, decertify, or place on probation anyone who does not notify the Department within 30 days of the arrest or conviction.

(e) The Department may decertify or suspend certification, or place a person on probation for any of the above violations.

(f) The Department may require an EMT to submit to a background check upon Department request. The Department may decertify or suspend certification, or place on probation an EMT who refuses to submit to a background check

(4)~~(3)~~ Refusal, Suspension or Revocation of Certification:] The Department may refuse to issue a certification or recertification, or suspend or revoke a certification for any of the following causes:

(a) Habitual or excessive use or addiction to narcotics or dangerous drugs[, or conviction of any offense relating to the use, sale, possession, or transportation of narcotics or dangerous drugs]. Refusal to take a drug test requested by an EMS employer or the department is grounds for action by the Department of Health.

(b) Habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an Emergency Medical Technician or while driving any emergency vehicle.

(c) Failure to comply with the emergency medical technician training certification or recertification requirements of ~~[R426-1]~~ this rule.

(d) Fraud or deceit in applying for or obtaining a certification or fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as an emergency medical technician.

(e) Involvement in the unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility.

(f) Performing procedures or skills beyond the level of certification or violation of laws pertaining to medical practice and drugs.

(g) Conviction of a felony, misdemeanor, or a crime involving moral turpitude, ~~[or the entering of a plea of guilty or the finding of guilt by a jury or court of commission of a felony or a crime involving moral turpitude]~~ excluding minor traffic violations chargeable as infractions.

(h) Mental incompetence as determined by a court of competent jurisdiction.

(i) Demonstrated inabilities and failure to perform adequate patient care.

(j) For good cause, including conduct which is unethical, immoral, or dishonorable.

(4) Initial Certification

~~—(a) Emergency Medical Technician - Basic (EMT) —~~ An individual who wishes [F] to be certified as a [n] Basic Emergency Medical Technician (EMT), [an individual] shall:

~~[(i)]~~ [S] submit a completed application form, including social security number, to the Department[-];

~~[(ii)]~~ [B] be 18 years of age or older[-];

~~[(c)]~~ submit to a background investigation;

~~[(iii)]~~ [C] complete a Department-approved EMT course[-];

~~[(iv)]~~ [D] display technical competence during field and clinical training[-];

~~[(v)]~~ [S] successfully complete the Department written and practical examinations[-]; and

~~[(vi)]~~ [C] complete all requirements for certification within 90 days from course completion date. The Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances. [Applicants with documented extenuating circumstances may be given special consideration on an individual basis.]

~~[(b)]~~ 5) An individual who wishes to be certified as an Emergency Medical Technician - Intermediate (EMT-I), [— This certification status may be awarded only to EMTs currently affiliated with a licensed EMT-I ambulance service or a rescue service specifically authorized by the EMS Committee to provide EMT-I services. The service is responsible to insure the proficiency of its EMT-I personnel. It is their obligation to the patients they serve to make certain that any EMT-I who is away from patient care for a prolonged time, be reintroduced to patient care in a proper manner which is safe for the patient. To be certified as an EMT-I, an individual] shall:

~~[(i)]~~ Submit a completed application form to the Department.

~~[(ii)]~~ Secure written approval from the resource hospital medical director and the director of the ambulance service with which the applicant is affiliated.

~~[(iii)]~~ (a) [H] have 12 months of field experience as a certified EMT[- H], however, the 12 month period may be reduced to six months with special authorization from the Department based upon a written request from the resource hospital medical director showing the need for advanced level EMTs;

~~[(iv)]~~ [b] [Have passed the Utah EMT written and practical examination with minimum scores to be established by the Department and] be currently certified as an EMT in Utah[-];

~~[(v)]~~ [C] complete a Department-approved EMT-I course[-];

~~[(vi)]~~ [D] display technical competence during field and clinical training[-];

~~[(vii)]~~ [S] successfully complete the Department written examination and clinical practical evaluation[-; and

~~[(viii)]~~ [C] complete all requirements for certification within 90 days from course completion date[-]; however, the Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances. [— Persons with documented extenuating circumstances may be given special consideration on an individual basis.]

~~[(c)]~~ Advanced Life Support Training Modules:

~~[(i)]~~ (6) An individual who wishes to be certified in EMT-IV Infusion (IV) [— This certification status may be awarded only to EMTs currently affiliated with a licensed EMT or EMT-I ambulance service or a rescue service specifically authorized by the EMS Committee to provide IV services. The service is responsible to insure the proficiency of its IV certified EMTs. It is their obligation to the patients they serve to make certain that any IV certified EMT whose job takes him away from patient care for a prolonged time, be reintroduced to patient care in a proper manner which is safe for the patient. To be certified in IV, an EMT] shall:

~~[(A)]~~ [Submit a completed application form to the Department.

~~[(B)]~~ Secure written approval from the resource hospital medical director and the director of the ambulance or rescue service with which the applicant is affiliated.

~~[(C)]~~ [H] have 12 months of field experience as a certified EMT[-; h] [H] however, the 12 month period may be reduced to six months with special authorization from the Department based upon a written request from the resource hospital medical director showing the need for advanced level EMTs;

~~[(D)]~~ [b] [Have passed the Utah EMT written and practical examination with minimum scores to be established by the Department and] be currently certified as an EMT in Utah[-];

~~[(E)]~~ [C] complete the Department-approved IV training module which includes pediatric vascular access[-];

~~[(F)]~~ [S] successfully complete the Department written examination and clinical practical evaluation[-]; and

~~[(G)]~~ [C] Complete all requirements for certification within 90 days from course completion date[-]; however, the Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances. [— Persons with documented extenuating circumstances may be given special consideration on an individual basis.]

~~[(ii)]~~ Defibrillator (D/Manual and Automatic) — This certification status may be awarded only to EMTs currently affiliated with a licensed EMT or EMT-I ambulance service or a rescue service specifically authorized by the EMS Committee to provide D/Manual services. To be certified in manual defibrillation an EMT shall:

~~[(A)]~~ Submit a completed application form to the Department.

~~[(B)]~~ Secure written approval from the resource hospital medical director and the director of the ambulance service with which the applicant is affiliated.

~~[(C)]~~ Be currently working for a licensed EMT D/Manual or EMT-I D/Manual ambulance or approved rescue service.

~~[(D)]~~ Shall be certified as an EMT, and have passed the Utah EMT written and practical examinations with minimum scores to be established by the Department, or be certified as an EMT-I.

~~[(E)]~~ Complete the Department-approved D/Manual or D/Automatic course.

~~(F) Successfully complete the Department written and practical examination.;~~

~~(b)Z) Recertification [For persons certified or recertified prior to July 1, 1990, recertification is required two years from the date of their last certification. For persons certified or recertified after July 1, 1990, recertification] is required every three years. This period may be modified by the Department to standardize EMT recertification cycles.~~

~~(a) [Emergency Medical Technician - Basic (EMT) -] An EMT-Basic who wishes [F]to recertify[an EMT] shall:~~

~~(i) [S]submit a completed application form, including social security number, to the Department[-];~~

~~(ii) submit to a background investigation;~~

~~(iii) [S]submit to the Department a current cardiopulmonary resuscitation card or certificate meeting standards approved by the Department[-];~~

~~(iii)iv) [For persons certified or recertified prior to July 1, 1990, who were certified for a period of two years, submit to the Department evidence of having completed 48 hours of Department-approved continuing medical education (CME) during the previous two year period.~~

~~(iv) For persons certified or recertified after July 1, 1990, for a three-year period,]submit to the Department evidence of having completed 60 hours of Department-approved CME during the previous three year period, in accordance with the Recertification Protocol for Emergency Medical Technicians[- Refer to R426 Appendix.];~~

~~(v) [S]successfully complete the Department EMT written and practical examinations[-];~~

~~(vi) Certification as an EMT-P or an EMT-I will fulfill EMT recertification requirements. Recertification will be for a concurrent time period.~~

~~(b) [Emergency Medical Technician - Intermediate (EMT-I) =] An EMT-Intermediate who wishes [F]to recertify[, an EMT] shall:~~

~~(i) [Submit a completed recertification application form to the Department.]complete all EMT-Basic recertification requirements.~~

~~(ii) [Be currently working for a licensed EMT-I ambulance service or approved rescue service.~~

~~(iii) For persons certified or recertified prior to July 1, 1990, who were certified for a period of two years, submit to the Department evidence of having completed 48 hours of CME during the previous two-year period, in accordance with standards established by the Department.~~

~~(iv) For persons certified or recertified after July 1, 1990, for a three-year period, submit to the Department evidence of having completed 60 hours of CME during the previous three-year period. Refer to R426 Appendix for CME requirements.~~

~~(v) Submit a current cardiopulmonary resuscitation card or certificate meeting standards approved by the Department.~~

~~(vi) S]successfully complete the Department written and practical Intermediate examination[-];~~

~~(vii)iii) [S]submit a letter to the Bureau from the resource hospital medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following EMT-I skills:[All pediatric vascular access requirements are effective July 1, 1992. Persons with documented extenuating circumstances may be given special consideration, not to exceed six months, on an individual basis.]~~

~~(A) [F]initiating and terminating intravenous infusion, including pediatric vascular access[-];~~

~~(B) [F]insertion and removal of intraosseous needles;~~

~~(C) [F]insertion and removal of esophageal obturator airway; and~~

~~(D) [A]administ[ering]ration of medications via intramuscular, subcutaneous, and intravenous routes.~~

~~(c) An EMT-IV who wishes to recertify[Advanced Life Support Training Modules:~~

~~(i) IV Infusion (IV) - To recertify an EMT-] shall:~~

~~(A) [S]successfully complete EMT-Basic recertification requirements[-];~~

~~(B)ii) [Be currently affiliated with a licensed EMT or EMT-I ambulance service or a rescue service specifically authorized by the EMS Committee to provide IV services.~~

~~(C) Commencing July 1, 1992,]submit a letter to the Bureau from the resource hospital medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in EMT-IV skills[-]; and~~

~~(D) Submit verification of completion of a Department-approved pediatric vascular access skills station, effective July 1, 1992. Persons with documented extenuating circumstances may be given special consideration, not to exceed six months, on an individual basis.~~

~~(E)-(iii) [S]successfully complete the Department IV written examination.~~

~~(ii) Defibrillator (D/Manual and Automatic) - To recertify an EMT or EMT-I shall:~~

~~(A) Successfully complete EMT or EMT-I recertification requirements.~~

~~(B) Be currently affiliated with a licensed EMT or EMT-I ambulance service or a rescue service specifically authorized by the EMS Committee to provide defibrillation services.~~

~~(C) Successfully complete the Department written and practical examination.;~~

~~(6)8) [Lapsed Certification~~

~~(a)-]Emergency Medical Technician[- Basic (EMT) - Those individual]s who permit their certification to lapse for a period of less than three years, and who wish to regain it shall:~~

~~(i) [S]submit a completed application, including social security number, to the Department[-];~~

~~(ii) submit to a background check;[For persons certified or recertified prior to July 1, 1990, who were certified for a period of two years, submit to the Department evidence of having completed 48 hours of Department-approved CME within two years prior to application.]~~

~~(iii) [For persons certified or recertified after July 1, 1990, for a three-year period,]submit to the Department evidence of having completed 60 hours of Department-approved CME within three years prior to application, in accordance with the Recertification Protocol for Emergency Medical Technicians;[- Refer to R426 Appendix for CME requirements.]~~

~~(iv) [S]submit a current cardiopulmonary resuscitation card or certificate meeting standards approved by the Department[-];~~

~~(v) [S]successfully complete the Department's written and practical examination[-];~~

~~(b) [Emergency Medical Technician - Intermediate (EMT-I) =] Those individuals who permit their EMT-I certification to lapse and wish to regain it shall:~~

(i) ~~[S]~~submit a letter to the Department requesting consideration for re-entry into the certification program. ~~[This letter]~~which shall be accompanied by the following items:

(A) ~~[A]~~completed recertification application including social security number[-];

(B) ~~[A]~~letter of recommendation from the ambulance or rescue service with which they are affiliated[-];

(C) ~~[A]~~letter of recommendation including results of a structured oral examination, from the resource hospital medical director verifying proficiency in EMT-I skills[-]; and

(D) ~~[Submit verification of completion of a Department-approved pediatric vascular access skills station, effective July 1, 1992. Persons with documented extenuating circumstances may be given special consideration, not to exceed six months, on an individual basis.~~

~~—(E) For persons certified or recertified prior to July 1, 1990, who were certified for a period of two years, submit to the Department evidence of having completed 24 hours of Department-approved CME for each year away from the program.~~

~~—(F) For persons certified or recertified after July 1, 1990, for a three-year period, submit to the Department evidence of having completed [evidence of completion of twenty hours of Department-approved CME for each year away from the program.~~

(ii) Upon Department approval for re-entry, complete the written and practical recertification examination.

(c) ~~[Advanced Life Support Training Modules:~~

~~—(i) IV Infusion (IV)—[Those individuals who permit their IV certification to lapse and wish to regain it shall:~~

(A) ~~[S]~~submit a completed recertification application to the Department, including social security number[-];

(B) ~~[B]~~be currently certified as a Utah EMT[-];

(C) ~~[Be currently affiliated with a licensed EMT or EMT-I ambulance service or a rescue service specifically authorized by the EMT Committee to provide IV services.~~

~~—(D) S]~~submit a letter of recommendation including results of a structured oral examination from the resource hospital medical director verifying proficiency in EMT-IV skills[-]; and

(E) ~~[Submit verification of completion of a Department-approved pediatric vascular access skills station, effective July 1, 1992. Persons with documented extenuating circumstances may be given special consideration, not to exceed six months, on an individual basis.~~

~~—(F) S]~~successfully complete the Department's written examination.

~~[(ii) Defibrillator (D/Manual and Automatic):~~

~~—(A) D/Manual - Those individuals who permit their certification to lapse and wish to regain it shall successfully complete D/manual initial certification requirements.~~

~~—(B) D/Automatic - Those individuals who permit their certification to lapse and wish to regain it shall submit a letter to the Department requesting consideration for re-entry into the certification program. This letter shall be accompanied by the following items:~~

~~—(I) A letter of recommendation from the ambulance or service agency.~~

~~—(H) A letter of recommendation including results of a structured oral examination, from the medical director.~~

~~—(HH) Upon Department approval for re-entry, complete the written and practical recertification examinations.]~~

~~(7)9 [Reciprocal Certification~~

~~—(a) Emergency Medical Technician - Basic (EMT) -]The Department may grant [R]reciprocity for EMT-Basic applicants certified outside of the State of Utah [will be]based on the following considerations:~~

~~(i) Applicants shall submit to the Department a completed application, including social security number.~~

~~(ii) Applicants shall provide the Department with a current copy of their Emergency Medical Technician Certification.~~

~~(iii) Applicants shall submit to a background check.~~

~~(i)iv] Applicants shall provide verification to the Department that the certifying course meets the standards established by the Department.~~

~~[(iii)v] Applicants shall successfully complete the Department's written and practical examinations[unless the State in which the applicant is currently certified has a reciprocal agreement with the Department].~~

~~[(iv) Applicants shall meet all Utah certification requirements.~~

~~—(v) EMT's residing in other states will be considered for reciprocal certification only if they provide emergency medical services within Utah.]~~

~~[(b)10 [Emergency Medical Technician - Advanced (EMT-I, IV and D) -]Reciprocity for advanced level applicants certified outside of the state of Utah is[will be], at the discretion of the Department, based on the following considerations:~~

(i) Applicants shall provide the Department with a copy of their current Emergency Medical Technician Certification.

(ii) Applicants shall provide verification to the Department that the certifying course meets the standards established by the Department.

(iii) Applicants shall successfully complete the Department applicable Advanced Level certification written and practical examinations[, unless the State in which the applicant is currently certified has a reciprocal agreement with the Department.

~~—(iv) Applicants shall meet all Utah Advanced Level certification requirements.~~

~~—(v) Applicants will be considered for reciprocal certification only if they will be affiliated with a licensed EMT-Advanced ambulance service or a rescue service approved by EMS Committee to provide EMT-Advanced services within Utah.~~

~~—(8) Certification Eligible - This certification status may be awarded to:~~

~~—(a) EMT-Advanced personnel who are not affiliated with a licensed EMT-Advanced agency.~~

~~—(b) EMT-Advanced personnel who have terminated employment or affiliation with a licensed agency. It will be the responsibility of the EMT Advanced to immediately notify the Bureau upon termination of employment so that the certification status may be updated.~~

~~—(c) Certification eligible EMT-Advanced personnel may remain certification eligible as long as they maintain their CME hours, CPR certification and testing requirements. Any certification eligible EMT-advanced who remains in this status for two years or longer, not delivering advanced EMT level patient care, who then requests full certification status due to employment by or affiliation with a licensed agency, will be required to successfully complete a skill examination consisting of requirements appropriate to the EMT-Advanced certification level.~~

~~— (9) Suspension - Refer to R426-1-11, excepting defibrillation certification. Defibrillation certification may be suspended for a period of 30 days in accordance with R426-1-7(1)(k)(i).~~

~~] (10) Initial Certification Examination Standards - Applicants who fail any part of the written or practical certifying examination may retest based upon the following [guidelines]:~~

(a) The applicant ~~[shall]~~must request a re-examination.

~~(b) [Re-examination shall be completed.] The applicant must take the re-examination [within 30 days] after notification of failure of the initial examination.~~

(c) Only one re-examination ~~[will be]~~is permitted.

~~(d) Applicants who fail [ing] the EMT-Basic re-examination [shall be required to] must take a complete EMT training course [or module] to be eligible for further examination.~~

~~(e) Applicants failing the IV Infusion re-examination must take that complete module to be eligible for further examination.~~

(11) Recertification Examination Standards

~~(a) [Emergency Medical Technician - Basic (EMT) - Persons] An EMT-Basic who fails any part of the written or practical recertification examination may retest based on the following [guidelines]:~~

(i) The applicant ~~[shall]~~must request a re-examination.

~~(ii) [Re-examination shall be completed.] The applicant must re-take the examination [within 120 days] after notification of failure of recertification examination.~~

(iii) Only one re-examination ~~[shall be]~~is permitted.

~~(iv) Applicants who fail the recertification re-examination [shall be required to] must take a complete EMT training course.~~

~~(b) [Emergency Medical Technician - Advanced (EMT-I, and D) - Persons] who fails any part of the written or practical recertification examination may retest based on the following [guidelines]:~~

(i) The applicant ~~[shall]~~must request a re-examination.

~~(ii) [Re-examination shall be completed.] The applicant must re-take the examination [within 30 days] after notification of failure of recertification examination.~~

(iii) Only one re-examination ~~[shall be]~~is permitted.

~~(iv) Applicants who fail the recertification re-examination [shall be required to] must:~~

~~— (A) R] retake the complete EMT-I training course to be eligible for further examination, [or~~

~~— (B) Challenge the EMT written and practical examinations; or~~

~~— (C) Forfeit all EMT certification.]~~

(12) [Instructor Standards

~~— (a) Emergency Medical Technician-Basic (EMT) - Those] An individual who teaches EMT training programs shall:~~

(i) Be certified as an Emergency Medical Technician Instructor[s], or instructor specialist[s] by the Department, or be a licensed physician[s] under Title 58;

~~(ii) [Meet certification standards established by the Department.] Successfully complete an instructor certification course.~~

~~(b) [Emergency Medical Technician - Advanced (EMT-I, IV and D) - Those] An individual who teaches EMT-Advanced training programs shall be licensed under Title 58 as a physician[s] or registered nurse[s] under Title 58], or be approved by the Department.~~

(c) [Emergency Medical Technician - Advanced (EMT-I, and IV) pediatric vascular access course - Those] An individual who teaches pediatric vascular courses must be a licensed physician[s] or registered nurse[s] who ~~[have]~~has completed a Department-approved pediatric advanced life support course or who ~~[have attended]~~has completed the Department Emergency Medical Services for Children instructor course.

(13) ~~[Display of Certification Level - EMTs, w] When responding to a medical emergency, EMTs shall display their Department-approved certification identification on outer clothing to identify competency level at the scene. EMT[s] representing volunteer ambulance services shall comply with this requirement to the extent practicable. Any person displaying a Utah EMT certification identification, [and] who is not so certified, [shall be] is guilty of a Class B misdemeanor, as provided in 26-8-7(1) and 26-8-15.~~

(14) An EMT shall be under medical control of a physician representing a designated resource hospital. When EMTs arrive at the scene of an injury or illness, they must secure radio or telephonic contact with their resource hospital to establish medical control as quickly as possible. If radio or telephonic contact cannot be obtained, the EMT must so indicate on the EMS report form and must follow local written protocol. If there is a physician at the scene who wishes to assist or provide medical direction to the EMT, the EMT shall follow his instructions, but only until communications are established with the physician at the resource hospital. Once communications are established with the resource hospital physician, the EMT shall take orders from him. If the physician at the scene wishes to continue directing EMT activities, the EMT shall place the at-scene physician in radio contact with the resource hospital physician. The resource hospital physician may (1) allow the physician at the scene to assume or continue medical control, (2) retain EMT medical control, but allow the physician at the scene to assist, or (3) retain medical control with no participation by the on-scene physician. If option (1) is followed, all orders given to EMTs by the at-scene physician shall be repeated over the radio or telephone by the resource hospital physician for evaluation and recording. If, in the judgment of the resource hospital physician who is monitoring and evaluating the at-scene medical control, the care is inappropriate to the nature of the medical emergency, the resource hospital physician may reassume medical control of the at-scene EMTs.

R426-1-14. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services

[June 13, 1997] 1998

26-8

Notice of Continuation December 9, 1997

◆ _____ ◆

Health, Health Systems Improvement,
Emergency Medical Services
R426-3
Utah Mobile Paramedic Rules

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 21035
FILED: 04/30/98, 15:21
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Bureau has been performing criminal background checks on all certifying and recertifying Emergency Medical Technicians (EMTs) since July 1996. At that time, the Bureau adopted a protocol as to what actions would result from specific criminal acts. This rule change would adopt the protocol into rule form. The Emergency Medical Services (EMS) Committee, at their quarterly meeting, requested that the Bureau delete references delineating who is on, and what the Paramedic Advisory Subcommittee is responsible for. This will bring the Paramedic Advisory Subcommittee into conformity with all other standing subcommittees.

SUMMARY: The proposed change requires the department to conduct criminal background checks on all certifying and recertifying paramedics. The proposed changes delineate what actions the department will take for specific criminal histories. The proposed change also makes it necessary for paramedics to notify the department within 30 days of their arrest, and it allows the department to decertify or suspend certification or place a person on probation for any of the violations. The change will make it mandatory for an applicant to put their social security number on their application. The proposed change deletes reference to how the Paramedic Advisory Subcommittee is organized.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Title 26, Chapter 8

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None.
 - ❖LOCAL GOVERNMENTS: None.
 - ❖OTHER PERSONS: None.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Systems Improvement,
Emergency Medical Services
Cannon Health Building
288 North 1460 West
PO Box 142004
Salt Lake City, UT 84114-2004, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Leslie Johnson at the above address, by phone at (801) 538-6292, by FAX at (801) 538-6808, or by Internet E-mail at ljohonso@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Rod L. Betit, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-3. Utah Mobile Paramedic Rules.

R426-3-3. Administration of the Mobile Paramedic Rules.

(1) ~~[EMS Committee Responsibilities]~~The EMS Committee is responsible to establish rules as enumerated in the Utah Emergency Medical Services Systems Act, Section 26-8-4. Pursuant to the Act (Subsection 26-8-3(3)) and to more effectively regulate the paramedic program, a Paramedic Advisory Subcommittee is established as a standing subcommittee advisory to the EMS Committee.

~~—(a) Paramedic Advisory Subcommittee - Membership tenure will be three years. A committee chairman, whose tenure of office shall be one year, will be elected by the committee.~~

~~—(b) The Paramedic Advisory Subcommittee shall be appointed by the EMS Committee and shall be constituted as follows:~~

~~—(i) Two members representing the Utah Medical Association, including one representative of the association at large and one cardiologist. In addition, there shall be one emergency room physician from each area with an operating paramedic service. The emergency room physician requirement may be waived if none exists.~~

~~—(ii) Two representatives of the Utah Nurses' Association, including one representative of the association at large and one representative involved operationally in the paramedic program on a daily basis.~~

~~—(iii) One representative from the Utah State Hospital Association.~~

~~—(iv) Paramedic provider representatives as deemed appropriate by the EMS Committee.~~

~~—(v) The current president and two representatives from the Utah Paramedic Association.~~

~~—(vi) One representative from the paramedic training institution.~~

~~—(vii) One consumer representative.~~

~~—(viii) One representative from a local governmental unit in which a paramedic program is operative.~~

~~—(ix) One representative of the Utah Ambulance Association.~~

~~—(x) The above membership list may be modified at the discretion of the Department.~~

~~—(c) The Paramedic Advisory Committee shall meet at least quarterly or as needed for the purpose of advising the Department on paramedic issues delineated below and others as requested by the Department.~~

- ~~— (i) Reviewing applications and making recommendations for licensure of organizations providing paramedic services.~~
- ~~— (ii) Recommending appointment of hospitals as base station hospitals or associate hospitals based upon local recommendations.~~
- ~~— (iii) Reviewing and making recommendations concerning policies and procedures for the Utah Mobile Paramedic program.~~
- ~~— (iv) Make recommendations for selection of paramedic trainees.~~
- ~~— (v) Reviewing training curriculum and recommending certification reciprocity policies; reviewing applications for certification of EMT-Paramedics graduated from courses in other states.~~
- ~~— (vi) Reviewing local paramedic program plans and needs.~~
- ~~— (vii) Reviewing and making recommendations to the EMS Committee for disciplinary action regarding EMT-Paramedics who have not complied with the requirements of R426-3. The EMT-Paramedic and a representative from the licensed provider concerned shall be present at disciplinary hearings.]~~

(2) ~~[Department Responsibilities --]~~The Department is responsible for licensing paramedic services, issuing ambulance and emergency response vehicle permits, developing, conducting, or authorizing training programs, testing and certifying EMT-Paramedics and administering rules herein adopted by the EMS Committee.

(a) The Department shall license paramedic services.

(i) An application for a license shall be made to the appropriate Department representative on forms provided by the Department and shall contain at least the following information:

- (A) ~~[W]~~written support from all related agencies[-];
- (B) ~~[F]~~financial statement (agencies are exempted)[-];
- (C) ~~[E]~~copy of the Articles of Incorporation, if incorporated[-];
- (D) ~~[F]~~the name and address of the owner of the paramedic service or proposed paramedic service[-];
- (E) ~~[F]~~the name under which the applicant is doing business or proposes to do business[-];
- (F) ~~[F]~~the training and experience of the applicant in the transportation and care of patients[-];
- (G) ~~[F]~~the location and description of the place or places from which the paramedic service is intended to operate[-];
- (H) ~~[F]~~the proposed geographic service area[-];
- (I) ~~[A]~~agreement to provide reports to the Department, for each trip made, on forms specified by the Department[-]; and
- (J) ~~[A]~~agreement to make available, time for recertification programs available by hospitals, division, district, or develop their own as necessary.

(ii) Upon receipt of an appropriately completed application form for a paramedic service license, the license officer shall comply with the requirements in Chapter 8, Title 26. The Paramedic Advisory Committee shall review each application and make recommendations to the EMS Committee for licensure based upon type of paramedic service to be offered, equipment, trained personnel, and whether the public convenience and necessity requires the proposed paramedic service. Upon approval by the EMS Committee, and before issuing a license to a new paramedic service, the license officer shall cause the paramedic vehicle and equipment to be inspected. The paramedic personnel training qualifications designated in each application hereunder will be reviewed to determine compliance with R426-3.

(iii) The applicant for a paramedic service provider license will assure the Department that it complies with the following standards:

(A) ~~[Response configuration --]~~Utilize one of the following response configurations which shall be so designated on the license.

(I) Paramedic Rescue - Rescue units to be used for response only, utilizing a licensed ambulance service for transport.

(II) Paramedic Tactical Rescue - A rescue unit trained in combat medical response whose primary mission is the retrieval and field treatment of injured peace officers or victims of traumatic confrontations. In addition to the information required under R426-3-3(2)(a) for licensure as a Paramedic Tactical Rescue Unit (PTRU), the applicant shall provide to the Department its standard operating procedures and a letter of recommendation by the Commissioner of the Utah Department of Public Safety. Upon licensure, a PTRU shall function within another EMS service licensure area at the invitation of the local or state public safety authority. The PTRU shall then notify the local EMS agency to establish medical protocol. The PTRU shall also immediately notify the Department of its activation and circumstances of deployment, including location, situation, possible duration, and special needs.

(III) Paramedic Ambulance - Ambulances to be used routinely to transport patients. These units shall also comply with the requirements of the Ambulance Rules of the Utah Emergency Medical Services Act.

(IV) Paramedic Ambulance Transfer Service - Paramedic ambulance services may be licensed for "Paramedic Transfer Service" only. The service is restricted to movement of patients, upon physician request, between medical or nursing facilities. This service is not intended to be a first response paramedic service.

(B) Staffing Requirements

(I) Paramedic configuration at the scene of an accident or medical emergency should be no less than two persons, each of whom is an EMT-Paramedic, licensed medical doctor or registered nurse under Title 58.

(II) Under extraordinary circumstances, as defined by the EMS Committee, a paramedic vehicle may be manned by one EMT-Paramedic and one EMT. The licensee shall maintain a log of all events and submit them to the Department thirty days prior to the quarterly EMS Committee meeting for Committee review. The log shall show each date of variance, vehicle identification number, variance time period and justification.

(III) When a paramedic ambulance has been requested by the referring or attending physician for non-first response inter-facility movement of a patient, and the physician describes the condition of the patient as "serious or potentially critical," paramedic ambulance minimum staffing shall be as noted under R426-3-3(2)(a)(iii)(B)(I) Where the physician describes the condition of the patient as "critical," minimum paramedic ambulance staffing shall be as noted under R426-3-3(2)(a)(iii)(B)(I), plus a driver who is the holder of a valid driver's license.

(IV) The Department shall not authorize the expansion of an existing paramedic service until the provider can show adequate manning levels to meet the required standard of two paramedics at the scene of each accident or medical emergency.

(C) Availability - Provide 24-hour coverage in the defined geographic service area. Paramedic transfer services shall provide 24-hour on-call coverage.

(D) Response Area - The closest vehicle will be dispatched regardless of geopolitical boundaries between contiguous paramedic services.

(iv) Equipment, Supplies and Medications - Each paramedic unit shall carry medical equipment, supplies, medications, access and extrication equipment, and a standard tool box as described in the "R426 Appendix" hereby incorporated by reference into R426-3. This document may be modified at the discretion of the Department as other needs or new methodology becomes known. Copies may be obtained from the Department.

(A) Tool Box - Paramedic services licensed only to provide paramedic ambulance transfer services are exempt from these requirements.

(B) Access and Extrication Equipment - The equipment specified may either be carried on board the paramedic vehicle or on a second vehicle that routinely accompanies the paramedic vehicle to the scene of an accident. Paramedic services licensed only to provide paramedic ambulance transfer services are exempt from these requirements.

(C) Medications - Due to the nature of the difficulties involved in delivering emergency medical care in the field, it will be the responsibility of the local physician advisor to direct the standardization of the optimal package form of medications and the equipment designed for the administration of medications. These package forms will be made available for the resupplying of the paramedic units.[

~~(F)~~ All medications shall be stored per manufacturers' recommendations for temperature control and packaging requirements. A record shall be maintained which records the minimum and maximum temperatures inside each drug box during each 24-hour period. Any medications known or suspected to have been subjected to temperature outside the recommended range shall be returned to the hospital for replacement.

(v) ~~[Inspections]~~The Department may conduct periodic inspections to determine that operational procedures, equipment condition and maintenance, drug and medication supplies and inventories are adequate and appropriate to the goals of the paramedic program. In this regard, Department representatives shall take the appropriate action to see that operational procedures, equipment condition and maintenance, drug and medication supplies and inventories found to be inadequate or inappropriate by any party are corrected, remedied, standardized or amended.[

~~(A)~~ Any licensed paramedic service shall allow emergency department physicians, nurses and other persons selected by the Department and participating in emergency medical services to ride with paramedic units for the purposes of:

~~(H)~~~~A~~ Evaluation of EMT-Paramedic performance.

~~(H)~~~~B~~ Identification of training needs.

~~(H)~~~~C~~ Improving communications between manpower resources.

~~(H)~~~~D~~ Clarification of role assignments as related to hospital emergency departments, communications, transportation and other components of the paramedic system.

~~(V)~~~~E~~ Training new paramedic personnel.

~~(V)~~~~E~~ Other purposes deemed necessary by the provider, District EMS Director or the Department.

(vi) ~~[Accident Reporting]~~All licensed providers shall send a copy of the official accident report to the Department whenever a

permitted vehicle is involved in an accident while responding to or transporting a patient.

(b) The Department shall recommend for designation by the EMS Committee participating base station hospitals and associate hospitals who shall comply with the following:

(i) Maintain a 24-hour emergency facility.

(ii) Assist the Department in collecting statistics and evaluating performance costs relating to the program. Each participating hospital shall use the standard Emergency Department Log or other forms as the Department requires.

(iii) Provide initial supplies of new medication when needed and replenish medical supplies and equipment expended during treatment of patients by mobile units.

(iv) Not transfer to another facility any patient who has been treated by a mobile intensive care paramedic unless or until, in the judgment of a licensed physician or registered nurse, the patient is medically able to be transferred and the transfer is in the best medical interest of the patient.

(v) Abide by the Utah Mobile Paramedic Rules established by the EMS Committee.

(vi) Provide to the Department a list of Hospital Paramedic Committee members. The committee should be composed of at least a licensed physician, designated as Medical Director for paramedic-hospital activities, a registered nurse, a representative of hospital administration and a certified paramedic. The committee shall meet monthly to:

(A) Assess paramedic field performance and evaluate continuing education needs. Each base and associate hospital shall submit a quarterly report of meetings outlining findings, recommendations, follow-up results and the names of paramedics involved in tape critique sessions.

(B) Review telemetry tapes.

(C) Maintain communications among Emergency Department personnel and the total paramedic care system.

(vii) Provide, at all times, operational radio or telephonic telemetry communications utilizing:

(A) Telemetry and recording equipment which conforms with current federal standards.

(B) Radio frequencies approved by the Department in conformance with the State Communications Plan.

(viii) Have a licensed physician or registered nurse, qualified in CPR and ECG interpretation who is supervised by a licensed physician acting in accordance with the provisions of the Utah Nurse Practice Act, immediately available at all times to communicate with the EMT-Paramedics in the field.

(ix) Provide supervised clinical training for initial EMT-Paramedic training and for the continuing education of certified EMT-Paramedics.

(x) Record in a bound log, tape recording of EMT-Paramedic transmissions including equipment checks and calibration tests.

(c) The Department shall approve local plans for paramedic system operation.

(i) Local emergency medical services councils will develop for Department approval, detailed plans for the operation of the paramedic systems within their district. Councils may request assistance from the Department in the development of paramedic system plans. Plans shall be in conformity with the Utah Mobile Paramedic Rules and shall include procedures and protocol as follows:

- (A) Communications including public access, paramedic dispatch, and training;
 - (B) Patient triage;
 - (C) Patient or guardian refusal of services;
 - (D) EMT-Paramedic standing orders;
 - (E) Patient or guardian facility preference;
 - (F) Patient transfer;
 - (G) Medical records transfer and accessibility; and
 - (H) In-service training.
- (ii) The plan will include letters of support from local government officials, hospital administration and paramedic providers to assure operational integrity of the paramedic system.
- (iii) Plans will include procedures for conducting in-service education programs and the responsible people to contact for the program.
- (iv) Plans for new paramedic services shall be submitted to the Department prior to the system start-up.
- (v) Paramedic system plans will be reviewed by the Department and returned to the District EMS Director within 30 days of submittal.

R426-3-4. Training and Certification.

(1) EMT-Paramedic certification will be awarded by the Department for a two year period upon successful completion of a training program which shall consist of a minimum of 480 hours training as determined by the Department and a ~~[satisfactory score]~~ pass on the Department certification examination. At the discretion of the Department a trainee may be provisionally certified as an EMT-Paramedic for a period not to exceed 90 days. ~~[One of two certification options will be awarded as follows:~~

~~— (a) EMT-Paramedic Certification. This certification status may be awarded only to EMT-Paramedics currently employed by an agency licensed by the Utah Department of Health to provide paramedic services. The employing agency is responsible to insure the proficiency of its EMT-Paramedics. It is their obligation to the patients they serve to make certain that any EMT-Paramedic whose job takes him away from patient care for a prolonged time, be reintroduced to patient care in a proper manner which is safe for the patient. To be certified as a paramedic, an individual shall:~~

~~— (b) EMT-Paramedic Certification Eligible. This certification status may be awarded to EMT-Paramedics not employed by a licensed paramedic agency or who have terminated employment with a licensed agency. It will be the responsibility of the EMT-Paramedic to immediately notify the Bureau upon termination of employment so that the certification status may be updated.]~~

(a) Have 12 months of field experience as a certified EMT. However, the 12 month period may be reduced to six months with special authorization from the Department based upon a written request from the resource hospital medical director.

(b) Be currently certified as an EMT in Utah.

(c) Submit a completed application form to the department.

(d) Submit to a background investigation.

~~(2) [Hospitals and Teaching Institutions --] Hospitals and [teaching institutions] paramedic training programs authorized by the Department to provide initial EMT-Paramedic training or continuing medical education experiences shall provide the following:~~

~~(a) [Q]qualified teaching staff and resource facility.~~

~~(b) [A]adequate clinical facilities to allow for a variety of learning experiences.~~

~~(c) [Q]qualified physicians, nurses and other health professionals to supervise trainees during initial training.~~

~~(d) Authorized hospitals shall provide a variety of supervised training experiences for trainees during initial training and for certified EMT-Paramedics as part of the continuing education program as defined in [R426-3-4(6)] this rule. Patient care clinical areas shall include the following:~~

~~(i) [E]emergency Department;~~

~~(ii) [H]intensive care unit;~~

~~(iii) [C]coronary care unit;~~

~~(iv) [D]delivery room;~~

~~(v) [O]perating room;~~

~~(vi) [R]recovery room.~~

~~(e) Trainees may be accepted into [tuition funded] programs under criteria established by the training institution, but shall as a minimum provide documentation of successful completion of an 120-hour EMT training program or its equivalent.~~

~~(f) The training institution, or Department, shall have the authority to terminate training of any trainee during any phase of the program because of:~~

~~(i) [F]failure to achieve minimum academic standards;~~

~~(ii) [D]disclosure of fraudulent application;~~

~~(iii) Failure of clinical or fieldwork training segments due to:~~

~~(A) [T]technical incompetence due to emotional instability under stress[-]; or~~

~~(B) [F]technical incompetence as determined by supervisory personnel or instructional staff of the training institution, training hospital or paramedic service involved in field internship training. Reasons for termination by the training institution shall be reduced to written form and submitted to the Department prior to any action taken toward trainee.~~

~~(iv) Conviction of any felony, misdemeanor or act or moral turpitude, excluding minor traffic violations chargeable as infractions.~~

(3) Paramedic training programs must meet the requirements of the paramedic training program accreditation standards as established by the Department.

~~([3]4) The Department shall establish EMT-Paramedic testing standards in conjunction with the paramedic training institutions.~~

~~([4]5) The Department shall establish other criteria relevant to the training of EMT-Paramedics.~~

~~([5]6) Training Program Monitoring - The Department shall be responsible for monitoring local in-service educational programs for EMT-Paramedics.~~

~~([6]7) Physician Training Consultant - Each paramedic provider shall provide for a physician operationally involved to serve as training consultant. The training consultant shall be responsible for the provider's paramedic continuing education program in accordance with state in-service training requirements and shall:~~

~~(a) Develop and maintain competency skill levels including the following subject areas:~~

~~(i) [T]triage;~~

~~(ii) [C]cardiopulmonary resuscitation;~~

~~(iii) [A]airway management including:~~

~~(A) [E]ndotracheal or esophageal intubation;~~

~~(B) [R]removal of foreign objects; and~~

- (C) [S]suctioning
- (iv) [A]administration of intravenous or intraosseous solutions and intravenous medications;
- (v) [D]drug administration;
- (vi) [A]arrhythmia recognition;
- (vii) [S]splinting and bandaging;
- (viii) [S]soft tissue injuries;
- (ix) [E]extrication and movement of injured persons;
- (x) [B]bleeding wounds and shock;
- (xi) [O]oxygen administration;
- (xii) [E]emergency childbirth; and
- (xiii) [M]medical and environmental emergencies.

R426-3-5. Recertification.

- (1) ~~[EMT-Paramedic]~~ Paramedic recertification shall be for a period of two years following initial certification. This period may be modified by the Department to standardize all expiration dates to June 30.
- (b)2) Thereafter, recertification shall be for a period of four years.
- (c)3) An EMT-Paramedic who wishes to~~[T0]~~ recertify ~~[an EMT-Paramedic]~~ shall:
 - (a) ~~Be currently working for a licensed paramedic service.~~
 - (ii) [S]submit a completed recertification application form, including social security number~~[to the Department]~~.
 - (b) submit to a background investigation.
 - (c)iii) [S]submit verification of current certification in Advanced Cardiac Life Support (ACLS) by the American Heart Association.
 - (d)iv) [S]submit verification of annual completion of 25 hours per year of Department approved continuing education~~[(C)]~~.
 - (e)v) [S]submit the results of a sponsoring agency peer evaluation confirming satisfactory field performance.
 - (f)vi) [S]submit a statement from the applicant's sponsoring agency confirming the applicant's physical fitness to perform paramedic functions, including the results of a TB examination.
 - (g)vii) [S]submit an evaluation and recommendation from the sponsoring agency's physician advisor.
 - (h)viii) [S]successfully complete the Department written examination.
- (4)d) At the discretion of the Department, an EMT-Paramedic may have his certification provisionally extended for a period not to exceed 90 days, for evaluation.
- ~~— (2) EMT-Paramedic Certification Eligible~~
 - (a) ~~Certification eligible EMT-Paramedics may remain certification eligible as long as they maintain their CME hours, ACLS certification and testing requirements. Any certification eligible EMT-Paramedic who remains in this status for two years or longer, not delivering paramedic level patient care, who then requests full certification status due to employment by a licensed agency, will be required to successfully complete a skill examination consisting of:~~
 - (i) Cardiac Mega Code;
 - (ii) Trauma Code;
 - (iii) McSwain Dart;
 - (iv) Central I.V. Lines;

R426-3-6. EMT-Paramedic Functions.

- (1) Upon satisfactory completion of the initial training program and upon Department certification, an EMT- Paramedic may carry out the following functions:
 - (a) Render advanced first aid, rescue and resuscitation services.
 - (b) Administer parenteral medications under the direct supervision of a licensed physician or a registered nurse both during training and after certification.
 - (c) Perform cardiopulmonary resuscitation and defibrillation in a pulseless, non-breathing patient.
 - (d) Where voice contact or a telemetered electrocardiogram is monitored by a licensed physician or a registered nurse supervised by a licensed physician, and direct communication is maintained, upon order of the physician or nurse, perform procedures and administer drugs approved by the EMS Committee as follows:
 - (i) [A]administer intravenous or intraosseous solutions;
 - (ii) [P]perform gastric suction by intubation;
 - (iii) [A]administer airway intubation by esophageal tube or endotracheal tube;
 - (iv) [P]perform needle aspiration of the chest;
 - (v) [P]perform a phlebotomy or draw blood specimens for analysis;
 - (vi) [A]administer drugs of the following classes:
 - (A) [A]antiarrhythmic agents;
 - (B) [V]vagolytic agents;
 - (C) [C]chronotropic agents;
 - (D) [H]ionotropic agents;
 - (E) [A]analgesic agents;
 - (F) [A]alkalinizing agents; and
 - (G) [V]vasopressor agents.
 - (vii) [P]provide medication by intracardiac puncture~~[-];~~ and
 - (viii) [P]perform cricothyroidotomy.
 - (e) Services noted in this section under written standing or contingency orders signed by the Base Station or Associate Hospital Medical Director(s) and approved by the Paramedic Advisory Subcommittee.
 - (2) At the scene of an accident, in transit, or where a sudden illness occurs, certified ~~[EMT-]~~Paramedics shall be responsible for the direction and provision of emergency medical care, as described in this section.
 - (3) The Department has a duty to exclude from EMT certification an individual who may pose an unacceptable risk to public health and safety, by virtue of his criminal history. The Department will conduct a background check on each individual who certifies or recertifies as an EMT.
 - (a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification by individuals convicted of the following crimes:
 - (i) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.
 - (ii) Sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person.
 - (iii) Abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the

victim is an out-of-hospital patient or a patient or resident of a health care facility.

(iv) Crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnaping, robbery of any degree; or arson; or attempts to commit such crimes.

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(i) Conviction of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole.

(ii) Conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) Crimes of violence against persons, such as assault

(B) Crimes defined as domestic violence under Section 77-36-1; and,

(C) Crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;

(D) Crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department shall deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) The seriousness of the crime.

(ii) Whether the crime relates directly to the skills of prehospital care service and the delivery of patient care.

(iii) Amount of time that has elapsed since the crime was committed.

(iv) Whether the crime involved violence to or abuse of another person.

(v) Whether the crime involved a minor or a person of diminished capacity.

(vi) Whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust.

(vii) Total number of arrests and convictions.

(viii) Whether the applicant was truthful regarding the crime on his/her application.

(d) Certified EMS personnel must notify the Department of any arrest or conviction. The Department may suspend, decertify, or place on probation anyone who does not notify the Department within 30 days of the arrest or conviction.

(e) The Department may decertify or suspend certification, or place a person on probation for any of the above violations.

(f) The Department may decertify or suspend certification, or place on probation an EMT-Paramedic who refuses to submit to a background check

(3)4 Refusal, Suspension or Revocation of Certification.

(a) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification for any of the following causes:

(i) Habitual or excessive use or addiction to narcotics or dangerous drugs[~~;~~ or conviction of any offense relating to the use, sale, possession, or transportation of narcotics or dangerous drugs.] Refusal to take a drug test by an EMS employer or the Department, is grounds for action by the Department of Health.

(i) Habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an EMT- Paramedic or while driving any emergency vehicle.

(ii) Failure to comply with the EMT-Paramedic training certification or recertification requirements of ~~[R426-3]~~ this rule.

(iii) Fraud or deceit in applying for or obtaining a certification or fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as an EMT-Paramedic.

(iv) Involvement in the unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility.

(v) Performing procedures or skills beyond the level of certification or violation of laws pertaining to medical practice and drugs.

~~(vi) Conviction of a felony or a crime involving moral turpitude, or the entering of a plea of guilty or the finding of guilt by a jury or court of commission of a felony or a crime involving moral turpitude.~~

(vi) Mental incompetence as determined by a court of competent jurisdiction.

(vii) Demonstrated inability and failure to perform adequate patient care.

(viii) For good cause, including conduct which is unethical, immoral, or dishonorable.

(5) ~~[EMT-Paramedic/Physician Relationships]~~ An EMT-Paramedic~~[-where possible;]~~ shall be under medical control of a physician representing a designated base station hospital~~[as described under R426-3-3-1.2]~~. When EMT-Paramedics arrive at the scene of an injury or illness, they ~~should~~ must secure radio or telephonic telemetry contact with a base station hospital Emergency Department to establish medical control as quickly as possible. If radio or telephonic telemetry contact cannot be obtained, EMT-Paramedics ~~should~~ must so indicate on the Incident Trip Report form and follow local written contingency orders of the base station hospital providing medical control. If there is a physician at the scene who wishes to assist or provide medical direction to the EMT-Paramedics, the EMT-Paramedics shall follow his instructions but only until communications are established with a physician at the base station hospital Emergency Department. Once communications are established with the base station hospital physician, the EMT-Paramedics ~~shall~~ must take orders from him. If the physician at the scene wishes to continue directing paramedic activities, the EMT-Paramedics shall place the at-scene physician in radio or telephonic contact with the base station physician. The base station physician ~~may~~ may ~~[has the option of]~~ (1) allow~~ing~~ ing the physician at the scene to assume or continue medical control, (2) ~~assuming~~ retain paramedic medical control, but allow~~ing~~ ing the physician at the scene to assist, or (3) ~~assuming~~ retain medical control with no participation by the on-scene physician. ~~[In the event]~~ If Option (1) is followed, all orders given to the EMT-Paramedic by the at-scene physician, shall be repeated over the radio or telephone to the base station hospital physician for evaluation and recording. If in the judgment of the base station

hospital physician who is monitoring and evaluating the at-scene medical control, the care is inappropriate to the nature of the medical emergency, the base station hospital physician may reassume medical control of the at-scene EMT-Paramedics.

R426-3-10. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services

~~[1991]~~1998

26-8-1

Notice of Continuation December 9, 1997



Health, Health Systems Improvement,
Emergency Medical Services
R426-4
Emergency Medical Dispatcher Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21028

FILED: 04/30/98, 10:38

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Bureau has been performing criminal background checks on all certifying and recertifying Emergency Medical Technicians (EMTs) since July 1996. At that time, the Bureau adopted a protocol as to what actions would result from specific criminal acts. This rule change would adopt the protocol into rule form. There are also a number of house keeping changes.

SUMMARY: The proposed change requires the department to conduct criminal background checks on all certifying and recertifying dispatchers. The proposed changes delineate what actions the department will take for specific criminal histories. The proposed change also makes it necessary for Emergency Medical Technicians (EMTs) to notify the department within 30 days of their arrest, and it allows the department to decertify or suspend certification or place a person on probation for any of the violations. The change will make it mandatory for an applicant to put their social security number on their application.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Title 26, Chapter 8

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Systems Improvement,
Emergency Medical Services
Cannon Health Building
288 North 1460 West
PO Box 142004
Salt Lake City, UT 84114-2004, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Leslie Johnson at the above address, by phone at (801) 538-6292, by FAX at (801) 538-6808, or by Internet E-mail at ljjohnso@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Rod L. Betit, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-4. Emergency Medical Dispatcher Rules.

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R426-4-2. Definitions.

~~(+)~~As used in R426-4:

~~(a)~~1) Department means the Utah Department of Health.

~~(b)~~2) Emergency Medical Dispatcher (EMD) means a person certified by the Department who has successfully completed a Department approved Emergency Medical Dispatch Course.

~~(c)~~3) Local Medical Director means a person recognized by the Department who assumes medical leadership for the provision of basic or advanced life support services in the dispatch agency's geographical area.

~~(d)~~4) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind.

~~(e)~~5) Selective Medical Dispatch System means a Department approved reference system used by a local dispatch agency to dispatch aid to medical emergencies which includes:

~~(f)~~a) ~~(S)~~systemized caller interrogation questions;

~~(f)~~b) ~~(S)~~systemized pre-arrival instructions; and

~~(f)~~c) ~~(P)~~protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

~~(f)~~6) Vehicle Response Mode means the use of emergency driving techniques, such as red-light-and-siren vs. routine driving response.

(g) Vehicle Response Configuration means the specific vehicle(s) of varied types, capabilities, and numbers responding to render assistance.

.....

R426-4-4. Personnel.

(1) Dispatchers serving medical providers are not required to be certified as Emergency Medical Dispatchers, but are encouraged to voluntarily seek training and certification through a Department approved course. Certification allows the dispatcher to fall under the liability immunity coverage provided in Subsection 26-8-11(2).

(2) ~~Certification --~~ The Department shall develop an Emergency Medical Dispatch training and certification program. Curriculum standards shall be established by the Department, ~~with certification standards as follows:~~

- ~~(a)~~ To be initially certified as an EMD, an individual must:
 - ~~(i)~~ ~~a~~ ~~S~~ successfully complete a state approved EMD Course.
 - ~~(ii)~~ ~~b~~ ~~submit to the department a completed application form, including social security number.~~
 - ~~(iii)~~ ~~c~~ ~~submit to a background check.~~
 - ~~(iv)~~ ~~d~~ ~~be currently certified in cardiopulmonary resuscitation (CPR) through a Department approved course.~~
 - ~~(v)~~ ~~e~~ ~~S~~ successfully pass the Department's written examination.

~~(vi)~~ ~~f~~ ~~C~~ complete all requirements for certification within 90 days from course completion date. The Department may ~~grant more time to complete all certification requirements to individuals who demonstrate extenuating circumstances that prevented completion within 90 days from the course completion date~~ extend the time limit to individuals who demonstrate good cause based on extenuating circumstances.

(3) ~~Recertification --~~ Recertification is required every three years to maintain state certification. This period may be modified by the Department.

~~(a)~~ An EMD who wishes to ~~re~~ recertify ~~an EMD~~ shall:

- ~~(i)~~ ~~a~~ ~~S~~ submit to the Department a completed application form ~~provided by the Department.~~ including social security number;

~~(ii)~~ ~~b~~ submit to a background check;

- ~~(iii)~~ ~~c~~ ~~S~~ submit to the Department a current card or certificate from the American Heart Association or the American Red Cross, reflecting satisfactory course completion and current certification in cardiopulmonary resuscitation ~~;~~ ;

~~(iv)~~ ~~d~~ ~~S~~ successfully complete the Department's EMD written examination ~~;~~ ; ~~and~~

~~(v)~~ ~~e~~ ~~C~~ complete 36 hours of Department approved continuing medical dispatch education or in-service during the three year recertification period.

(4) ~~Reciprocal certification --~~ The Department may grant ~~r~~ reciprocity for applicants certified outside of Utah ~~will be~~ based on the following considerations:

- (a) Applicants shall provide the Department with a current copy of their Emergency Medical Dispatcher certification.
- (b) Applicants shall provide the Department proof that the certifying course meets the standards established by the Department.
- (c) Applicants shall successfully complete the Department's written examination.

~~(d) Applicants shall meet all Utah certification requirements.~~
~~(e) Emergency Medical Dispatchers residing in other states will be considered for reciprocal certification only if they provide emergency medical services within Utah.~~

(5) ~~Certification and recertification for the handicapped -- R426-4~~ This Rule shall not preclude any physically handicapped individual from certifying or recertifying who can demonstrate proficiency in verbally describing the treatment methods outlined in the Department approved EMD Course to a caller.

(6) ~~Lapsed certification --~~ Those individuals who permit their certification to lapse may be recertified by completion of the recertification requirements ~~and personal interview with a Department designated interviewer.~~

(7) ~~Instructor Standards --~~ Instructors who teach emergency medical dispatchers shall meet certification standards established by the Department.

(8) The Department has a duty to exclude from EMT certification an individual who may pose an unacceptable risk to public health and safety, by virtue of his criminal history. The Department will conduct a background check on each individual who certifies or recertifies as an EMT.

(a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification by individuals convicted of the following crimes:

- (i) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.
- (ii) Sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person.
- (iii) Abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility.

(iv) Crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnaping, robbery of any degree; or arson; or attempts to commit such crimes.

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

- (i) Conviction of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole.
- (ii) Conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

- (A) Crimes of violence against persons, such as assault
- (B) Crimes defined as domestic violence under Section 77-36-1; and.
- (C) Crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;
- (D) Crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department shall deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

- (i) The seriousness of the crime.
- (ii) Whether the crime relates directly to the skills of prehospital care service and the delivery of patient care.
- (iii) Amount of time that has elapsed since the crime was committed.
- (iv) Whether the crime involved violence to or abuse of another person.
- (v) Whether the crime involved a minor or a person of diminished capacity.
- (vi) Whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust.
- (vii) Total number of arrests and convictions.
- (viii) Whether the applicant was truthful regarding the crime on his/her application.

(d) Certified EMS personnel must notify the Department of any arrest or conviction. The Department may suspend, decertify, or place on probation anyone who does not notify the Department within 30 days of the arrest or conviction.

(e) The Department may decertify or suspend certification, or place a person on probation for any of the above violations.

(f) The Department may require an EMT to submit to a background check upon Department request. The Department may decertify or suspend certification, or place on probation an EMT who refuses to submit to a background check

~~(9)(8) Refusal, Suspension or Revocation of Certification:~~

~~(a) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification for any of the following causes:~~

~~(i)a) Habitual or excessive use or addiction to narcotics or dangerous drugs[, or conviction of any offense relating to the use, sale, possession, or transportation of narcotics or dangerous drugs]. Refusal to take a drug test as requested by an EMS employer or the Department is grounds for action by the Department of Health.~~

~~(i)b) Habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an Emergency Medical Dispatcher or while driving any emergency vehicle.~~

~~(i)c) Failure to comply with the emergency medical dispatcher training certification or recertification requirements of this rule.~~

~~(i)d) Fraud or deceit in applying for or obtaining a certification or fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as an emergency medical dispatcher.~~

~~(i)e) Involvement in the unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility.~~

~~(i)f) Performing procedures or skills beyond the level of certification or violation of laws pertaining to medical practice and drugs.~~

~~(i)g) Conviction of a felony, misdemeanor or a crime involving moral turpitude, but not including minor traffic violations chargeable as infractions.[or the entering of a plea of guilty:]~~

~~(i)h) Mental incompetence as determined by a court of competent jurisdiction.~~

~~(i)i) Demonstrated inabilities and failure to perform adequate patient care.~~

~~(i)j) For good cause, including conduct which is unethical, immoral, or dishonorable.~~

R426-4-5. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services

[1994]1998

26-8

Notice of Continuation December 2, 1997



**Health, Health Systems Improvement,
Health Facility Licensure
R432-100
General Hospital Standards**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21036

FILED: 04/30/98, 15:32

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: A task force was established by the Health Facility Committee to review all sections of the rule as part of the five year review process.

SUMMARY: The organization of the rule sections has been modified. All sections of the rule have been re-numbered to be placed accordingly. Redundant wording has been eliminated by consolidating appropriate sections throughout the rule. The rule adds "Telemedicine Services" and "Pet Therapy" as new sections. The "Purpose" section clarifies patient care standards as applying to inpatient, outpatient and satellite services. The "Construction Standard" section has been re-named "Construction, Facilities, and Equipment Standards." The "Inpatient Hospice" section has been deleted. The "Medical Orders" section has been deleted and integrated into "Medical Records." The "Ambulatory Surgery" section has been deleted and integrated into the "Surgical Services" section. "Obstetrical Services" and "Nursery Services" have been combined to create "Perinatal Services" and adds a three level nursery designation. "Physical Therapy" has been re-named "Rehabilitative Therapy Services" and includes physical therapy, occupational therapy, and speech therapy. The "Special Care Unit" section has been re-named "Critical Care Unit" and adds dialysis service to this section. The "Quality Assurance"

section has been re-named "Quality Improvement" and clarifies Department authority to review incident reports; redundant references to quality assurance have been deleted from other individual sections. The "Emergency and Disaster Plan" section clarifies that fire drills and documentation must comply with the Utah Fire Prevention Board. The "Administrator" section clarifies administrator responsibility for hospital policies and procedures and adds compliance to the Utah Anatomical Gift Act. The "Personnel Management Service" section adds unit specific training requirements, competence training, Cardiopulmonary Resuscitation (CPR) certification, volunteer utilization and supervision, annual inservice training for reporting abuse, neglect or exploitation; redundant personnel requirements have been deleted from individual sections and consolidated under this section. The "Infection Control" section adds reuse guidelines and incorporates infection control into the quality improvement process. The "Medical and Professional Staff" section adds a fair hearing process and continuing education requirements. The "Patient Rights" section adds compliance with the Personal Choice and Living Will Act, and adds the right to be free from abuse and restraints. The "Nursing" section was re-named "Nursing Care Services" and adds reference to Section R156-31-603, "Delegation of Nursing Tasks," and adds written discharge and referral instructions requirements. The "Anesthesiology Services" section deletes requirement for certified registered nurse anesthetists to practice under the medical direction of a physician as per changes to the Nurse Practice Act. The "Emergency Care Service" section has been re-named "Emergency Care Service" and adds the Level IV emergency designation, security and control procedures, hazardous materials and contaminated patient protocols, and unconscious patient or unaccompanied minor protocols. The "Pediatric Services" section adds security and control protocols, pediatric specific training, and maturity and development assessments. The "Radiology Services" section clarifies retention of radiological film. The "Laboratory and Pathology Services" section adds compliance with the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and clarifies Department authority to review CLIA inspection reports; the remainder of this section has been deleted as being redundant to CLIA requirements. "Blood Bank and Services" has been re-named "Blood Services" and clarifies the definition of a transfusion service; adds requirement for blood banks and donor centers to be accredited with inspection reports available for Department review. "Pharmacy Services" adds provisions for electronic storage, dispensing, and accounting of narcotics; eliminates the requirement for a pharmacy and therapeutic committee. The "Psychiatric Services" section adds reference to R432-101, "Specialty Hospitals, Psychiatric." The "Substance Abuse Treatment" section has been re-named "Substance Abuse Rehabilitative Services" and adds reference to the Mental Health Practice Act. The "Outpatient Services" section clarifies the definition of outpatient services; the remainder of the section was deleted as being redundant to other sections. The "Dietary Services" section deletes the requirement for a certified food manager and adds evening snack provisions. The "Medical Records" section incorporates record requirements from other sections and adds provisions for computer charting and computer key

authentication of signatures. It also adds reference to the Personal Choice and Living Will Act and the Utah Anatomical Gift Act including required documentation and adds reference to Vital Statistics Act. The "Central Supply Services" section adds equipment maintenance requirements; storage clearances have been deleted and integrated into "Housekeeping Services." The "Laundry Services" section adds provisions for employee laundering of scrubs. "Housekeeping Services" section adds requirements for storage of toxic materials and clearances for storage. The "Maintenance Services" section adds requirements to maintain equipment according to manufacturer specifications and adds provisions for maintaining walkways, exits and entrances in a safe condition. It also adds hot water specifications.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There will be a compliance cost incurred for printing and distributing the revised rule.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: The actual cost or savings to providers cannot be accurately determined by the agency; therefore, a description of cost and savings-related actions is substituted in this section. Costs: Cost to implement compliance with Personal Choice and Living Will Act; cost to rural hospitals with federal swing bed designation to implement adopted rules from R432-150, Nursing Facility Rule; cost to hospitals with psychiatric units to implement adopted sections of R432-101, Psychiatric Hospital Rule; cost to provide substantial evening snacks to patients or swing bed residents. Savings: Savings due to the deletion of the requirement to have a certified food manager; possible savings in that rehabilitative services are no longer a required service; possible savings in allowing hospitals to reuse previously designated single use items; possible savings in allowing hospitals to require employee laundering of scrubs; possible savings in that the revised rule does not specifically prescribe required equipment and supplies; rather, the hospital must equip according to the needs of the patient population served; savings in combining ambulatory surgery with surgical services as ambulatory surgery will no longer require separate files, medical staff and committee appointments; savings in combining obstetrical services and nursery services into perinatal services as the combined service will combine files, staffing, and committee appointments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Hospital compliance cost to revise policies and procedures; hospital compliance cost to orient employees to revised rule sections; State compliance cost to print and distribute revised rule.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
Box 142853

Salt Lake City, UT 84114-2853, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Debra Wynkoop-Green at the above address, by phone at
(801) 538-6320, by FAX at (801) 538-6325, or by Internet E-
mail at dwynkoop@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING
BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO
LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Rod L. Betit, Executive Director

**R432. Health, Health Systems Improvement, Health Facility
Licensure.**

R432-100. General Hospital Standards.

R432-100-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-100-2. Purpose.

The purpose of this rule is to promote the public health and
welfare through establishment and enforcement of the licensure
standards. The rule sets standards for the construction and
operation of a general hospital. The standards of patient care apply
to inpatient, outpatient, and satellite services.

**R432-100-3. Construction, Facilities, and Equipment
Standards.**

(1) Hospitals shall be constructed and maintained in
accordance with [See] R432-4-1 through R432-4-24.

~~—(2) An on-site emergency generator shall be provided which
is connected to the following services:~~

~~—(a) life safety branch, as defined in section 517-32 of the
National Electric Code NFPA 70;~~

~~—(b) critical branch, as defined in 517-33 of the National
Electric Code NFPA 70; and~~

~~—(c) equipment system, as defined in 517-34 of the National
Electric Code NFPA 70.~~

~~—(3) Transitional Care units shall be licensed as Nursing Care
Facilities under a separate licensure category and shall conform to
the Requirements of R432-150.]~~

R432-100-4. Hospital Swing-Bed and Transitional Care Units.

Hospitals with designated swing bed units or transitional care
units shall comply with this section.

(1) In addition to R432-100, designated hospital swing beds
shall comply with the following sections of R432-150, Nursing
Care Facility Rules: 150-4, 150-5, 150-11 through 150-17, 150-20,
150-22, and 150-24.

(2) Transitional Care Units shall be licensed as Nursing Care
Facilities under a separate licensing category and shall conform to
the requirements of R432-150, Nursing Care Facility Rules.

R432-100-[4]5. Governing Body.

(1) Each licensed hospital shall have a governing body
hereinafter called the board.

(2) The board shall be legally responsible for the conduct of
the hospital. The board is also responsible for the appointment of
the medical staff.

~~(3) [Board Organization:~~

~~—(a)—]The board shall be organized in accordance with the
Articles of Incorporation or Bylaws.~~

~~[(b)a] The Articles or Bylaws shall specify:~~

~~(i) The duties and responsibilities of the board;~~

~~(ii) The method for election or appointment to the board;~~

~~(iii) The size of the board;~~

~~(iv) The terms of office of the board;~~

~~(v) The methods for removal of board members and officers;~~

~~(vi) The duties and responsibilities of the officers and any
standing committees;~~

~~(vii) The numbers or percentages of members that constitute
a quorum for board meetings;~~

~~(viii) The board's functional organization, including any
standing committees;~~

~~(ix) To whom responsibility for operation and maintenance of
the hospital, including evaluation of hospital practices, may be
delegated;~~

~~(x) The methods established by the board for holding such
individuals responsible;~~

~~(xi) The mechanism for formal approval of the organization,
bylaws, rules of the medical staff and hospital departments;~~

~~(xii) The frequency of meetings.~~

~~(4) [Board Meetings:~~

~~—(a)—]The board shall meet not less than quarterly[-], and[~~

~~—(b) The board] shall keep written minutes of [its] meetings and
actions, and distribute copies to members of the board.~~

~~(5) [Board Officer:~~

~~—]The board shall employ a competent executive officer or
administrator and vest [him]this person with authority and
responsibility for carrying out [its]board policies. The
administrator's qualifications, responsibilities, authority, and
accountability shall be defined in writing.[-The administrator shall
provide liaison among the board, and medical staff.]~~

~~(6) [Board Functions:~~

~~—]The board, through its officers, committees, medical and other
staff, shall:~~

~~(a) Develop and implement a long range plan;~~

~~(b) Appoint members of the medical staff and delineate their
clinical privileges;~~

~~(c) Approve organization, bylaws, and rules of medical staff
and hospital departments; and~~

~~[(d) Employ competent and well-qualified personnel to carry
out the functions of the hospital; and~~

~~—(e)[d] Maintain a list of the scope and nature of all contracted
services.~~

R432-100-[5]6. Administrator.

~~[(1) Appointment and Responsibilities:~~

~~—(a) The board shall appoint a competent and well-trained
administrator with authority and responsibility for the operation of~~

the hospital, subject to the policies enacted by the governing board and to such orders as it may issue:

~~—(b) Upon appointment of a new administrator, the board shall inform the Department of Health the name of the new administrator.~~

~~—(2)(1) The administrator shall establish and maintain an organizational structure for the hospital indicating the authority and responsibility of various positions, departments, and services within the hospital.~~

~~[(3) To ensure administrative direction for the hospital at all times, the administrator shall designate an individual to act in his absence.]~~

(2) The administrator shall designate in writing a person to act in the administrator's absence.

~~[(4)(3) The administrator shall be the direct representative of the board in the management of the hospital, and shall be accountable to the board for the performance of his duties.]~~

~~[(5)(4) The administrator shall provide function as liaison between the board, the medical staff, the nursing staff, and other departments of the hospital.]~~

[(6)(5) The administrator shall advise the board in the formulation of hospital policies and procedures. The administrator shall review and revise policies and procedures to reflect current hospital practice.

(6) The administrator is responsible to see that hospital policies and procedures are implemented and followed.

(7) The administrator shall maintain a written record of all business transactions and patient services rendered in the hospital and submit reports as requested to the board.

(8) Patient billing practices shall comply with the requirements of 26-21-20 UCA.

(9) The administrator shall appoint a member of the staff to oversee compliance with the requirements of the Utah Anatomical Gift Act.

R432-100-[6]7. Medical and Professional Staff.

(1) ~~[Organization:~~

~~—(a) Each hospital shall have an organized medical and professional staff that operates under bylaws approved by the board governing body, and is responsible for the quality of care provided to patients within the hospital.]~~

~~[(b)(2) The medical and professional staff shall advise and be accountable to the board governing body for the quality of medical care provided to patients.~~

~~[(2)(3) [Bylaws, Policies and Procedures:~~

~~—]The medical and professional staff must adopt bylaws, and policies and procedures that to establish and maintain a qualified medical and professional staff including current licensure, relevant training and experience, and competency to perform the privileges requested. The bylaws shall address:~~

(a) The ~~[credentialing]~~ appointment and re-appointment process ~~[including:]~~;

(b) The necessary qualifications for membership;

(c) The delineation of privileges;

~~[(d) The scope of privileges for specified professionals who are not members of the medical staff.]~~

(d) The participation and documentation of continuing education; and

(e) A fair hearing and appeals process.

~~[(3) The members of the medical and professional staff must be legally, professionally and ethically qualified.]~~

(4) The medical care of all persons admitted to the hospital shall be under the supervision and direction of a fully qualified physician who is licensed by the state.

(5) An applicant for staff ~~[M]~~membership and privileges may not be denied solely on the ground that the applicant is a licensed podiatrist or licensed psychologist rather than licensed to practice medicine under the Utah Medical Practice Act or the Utah Osteopathic Medical Licensing Act.

(6) Membership and privileges may not be denied on any ground that is otherwise prohibited by law.

(7) Each applicant for medical and professional staff membership must be oriented to the bylaws and ~~[rules and regulations, and policies and]~~ must agree in writing to abide by all conditions.

(8) The medical and professional staff shall review each applicant and grant privileges based on the scope of their license and demonstrated skills and abilities.

(9) The medical and professional staff shall review appointments and re-appointments to the medical and professional staff at least every two years.

~~[(8) In hospitals participating in professional graduate education programs, the rules and regulations and policies specify the mechanism by which house staff are supervised by members of the medical staff in carrying out patient care responsibilities.]~~

~~R432-100-7. Medical Orders:~~

~~—All medical orders shall be in writing and signed by a member of the medical staff.]~~

R432-100-[9]8. Personnel Management Service.

(1) ~~[Organization:~~

~~—]The personnel management system is organized to ensure personnel are competent to perform their respective duties, services, and functions.~~

(2) ~~[Policies and Procedures:~~

~~—]There shall be written policies, and procedures, and performance standards that include:~~

(a) Job descriptions for each position or employee;

(b) Periodic employee performance evaluations;

~~(c) Employee health screening, including Tuberculosis testing in accordance with R386-702, The Communicable Disease Rule; Documentation of requirements of the Infection Control Committee for employee health maintenance and safeguards;]~~

~~(d) Policies to ensure that only competent employees are available for service in the hospital; all employees receive unit specific training;~~

~~(e) Policies to ensure that all hospital direct care staff receive continued competency training in current patient care practices;~~

~~(f) Policies to ensure that all hospital direct care staff have current CPR certification;~~

~~(g) Policies to ensure that OSHA regulations regarding Blood Borne Pathogens are implemented and followed.~~

(3) All personnel shall be registered, certified or licensed as required by the Utah Department of Commerce.

(4) The personnel department shall ensure that all personnel are licensed, certified or registered within 45 days of employment.

(5) A copy of the current certificate, license or registration shall be available for Department review.

~~[(6) Failure to ensure that staff members are licensed, certified or registered may result in sanctions to the facility license.]~~

(6) All direct care and housekeeping staff shall receive annual documented inservice training in the requirements for reporting abuse, neglect, or exploitation of children or adults.

(7) Volunteers may be utilized in the daily activities of the hospital, but shall not be included in the hospital staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened and supervised according to hospital policy.

(b) Volunteers shall be familiar with hospital volunteer policies, including patient rights and hospital emergency procedures.

(8) If the hospital participates in a professional graduate education program, there shall be policies and procedures specifying the patient care responsibilities and supervision of the graduate education program participants.

R432-100-~~[H]~~9. Quality ~~[Assurance]~~Improvement Plan.

(1) The Board shall ensure that there is a well-defined ~~[Q]~~quality ~~[Assurance]~~improvement ~~[P]~~plan designed to improve patient care.

(2) The plan shall be consistent ~~[and within achievable goals and available resources]~~with the delivery of patient care.

(3) The plan shall be implemented and include a ~~[method]~~system for the collection of indicator data.~~[.]~~

(a) The plan shall include an incident reporting system to ~~[H]~~identify~~[ing]~~ problems, concerns, ~~[or]~~and opportunities for improvement of patient care.

(b) Incident reports shall be available for Department review.

~~[(b)c]~~ A system shall be implemented for ~~[A]~~assessing identified problems, concerns, and opportunities for improvement.

(4) The plan shall implement actions that are designed to:

~~—(a) E] eliminate identified problems[.] and~~

~~—(b) F] improve patient care.~~

(5) The quality improvement committee shall keep written minutes documenting corrective actions and results. Documentation shall be available for Department review.

(6) The quality improvement committee shall report findings and concerns at least quarterly to the medical staff, administrator, and ~~[G]~~governing ~~[B]~~body.

(7) Infection reporting shall be integrated into the quality improvement plan, and shall be reported to the Department in accordance with R386-702 Communicable Diseases.

R432-100-10. Infection Control.

~~[(1) Organization:~~

~~—]There shall be a hospital-wide infection control program, [that includes:]~~

(1) The program shall include at least the following:

(a) Definitions of nosocomial infections;

(b) A system for reporting, evaluating, and ~~[correcting records of]~~investigating infections;

(c) Review and evaluation of aseptic, isolation, and sanitation techniques;

(d) Methods for isolation in relation to the medical condition involved;

(e) Preventive, surveillance, and control procedures~~[-];~~

(f) Laboratory services;

(g) An employee health program;

(h) Orientation of all new employees;

(i) Documented in-service education for all departments and services relative to infection control.

(2) Infection control reporting data shall be incorporated into the hospital quality improvement process.

~~—(2) Infection Control Committee:~~

~~—(a) Responsibility for the infection control program shall be vested in an Infection Control Committee.~~

~~—(b) One person on the committee shall be responsible for the oversight of the committees' directives.~~

~~—(c) The Infection Control Committee shall include representatives from the administration, medical, and nursing staff. Other services or departments shall be represented as needed.~~

~~—(d) The Infection Control Committee shall determine and approve the type and scope of surveillance and reporting programs to be used.~~

~~—(e) There shall be standard written criteria for reporting all nosocomial infections.~~

~~—(f) The Infection Control Committee shall meet at least quarterly and shall keep written minutes of its meetings.~~

~~—(g) The Infection Control Committee shall regularly report its findings and recommendations to the medical staff, the chief executive officer, and the director of nursing, and the person(s) responsible for hospital wide quality assessment and improvement.]~~

(3) ~~[Policy:~~

~~—(a)]There shall be written infection-control policies and procedures for each area of the hospital, including requirements dictated by the physical layout, personnel and equipment involved.~~

~~[(b) The policies and procedures shall be reviewed every two years, revised as necessary, and enforced by the administrator and the medical staff.~~

~~—(c) Written guidelines shall be available to all personnel involved in patient care and in procedures known to be associated with infections.~~

~~—(d)](4) There shall be written [guidelines]policies for the selection, storage, handling, use, and disposition of disposable or reusable items. Single-use items [shall not be reused.]may be reused according to hospital policy.~~

(a) Reusable items shall have specific policies and procedures for each type of reuse item.

(b) Reuse data shall be incorporated into the quality improvement process.

(c) Reuse data shall be incorporated in the hospital infection control identification and reporting process.

R432-100-~~[H]~~11. Patient Rights.

(1) The facility shall inform and provide a written statement to the patient at the time of admission of ~~[his-]patient[']s~~ rights and support the ~~[individual's-]exercise of [their]the patient's~~ right to the following:

(a) to access all medical records, and to purchase at a cost not to exceed the community standard, photocopies of his record;

(b) to be fully informed of his medical health status in a language he can understand;

(c) to reasonable access to care;

~~[(c)d] [the right-]to refuse treatment;~~

(~~d~~e) [~~the right~~] to formulate an advanced directive in accordance with the Personal Choice and Living Will Act, UCA 75-2-1102 ;

(~~e~~f) [~~the right~~] to uniform, considerate and respectful care;

(~~f~~g) [~~the right~~] to participate in decision making involved in managing his health care with his physician, or to have a designated representative involved;

(~~g~~h) to express complaints regarding the care received and to have those complaints resolved when possible;

(~~h~~i) to refuse to participate in experimental treatment or research; and

(~~i~~j) to be examined and treated in surroundings designed to give visual and auditory privacy.

(k) to be free from mental and physical abuse, and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a licensed practitioner for a specified and limited period of time or when necessary to protect the patient from injury to himself or others.

(2) The hospital shall establish a policy and inform patients and legal representatives [~~the policy on~~] regarding the withholding of resuscitative services and the forgoing or withdrawing of life sustaining treatment and care at the end of life. This policy [~~with~~] shall be consistent with state law.

[~~(3) Itemized Billing Statements:~~

~~(a) Patients who receive medical care or other services from a hospital shall be provided an itemized bill which includes a line item for each service or item for which the patient is charged, in compliance with 26-21-20.~~

~~(b) The itemized bill shall include the date of service and describe, the quantity of and specific charges for each billed item.~~

~~(c) The itemized bill shall be provided at hospital expense to the patient, his personal representative, or his agent at the time any statement is provided to any person or entity for billing purposes.~~

~~(i) If the statement is to be provided to a third party, it shall be provided to the patient as soon as possible and practicable and shall be marked "Duplicate: Do Not Pay" or other appropriate language.~~

~~(ii) Hospitals are not required to provide an itemized bill to patients who receive medical care or services under Title XIX (Medicaid) of the Social Security Act, in accordance with 26-21-20.]~~

R432-100-[8]12. Nursing Care Services.

(1) [~~Organization:~~

~~]There shall be an organized nursing department that is integrated with other departments and services.~~

~~(a) The [~~administrator~~] chief nursing officer of the nursing department shall be a registered nurse with demonstrated ability in nursing practice and administration.~~

~~(b) Nursing policies and procedures, nursing standards of patient care, and standards of nursing practice shall be approved by the chief nursing officer.~~

~~(~~b~~c) A registered nurse shall be designated and authorized to act in the [~~nurse administrator's~~] chief nursing officer's absence.~~

~~(d) Nursing tasks may be delegated pursuant to R156-31-603, Delegation of Nursing Tasks.~~

(2) [~~Staffing:~~

~~]Qualified registered nurses shall be on duty at all times to give patients nursing care that requires the judgment and special skills of a registered nurse.~~

(a) The nursing department [~~or service~~] shall develop and maintain a system for determining staffing requirements for nursing care on the basis of demonstrated patient need, intervention priority for care, patient load, and acuity levels.

(b) The staffing patterns shall assure the presence of registered nurses on a 24-hour basis.

(3) [~~Nursing Documentation:~~

~~(a) The ~~n~~ Nursing care [~~process~~] shall be documented for each patient from admission through discharge.~~

~~(~~b~~a) A registered nurse shall [~~document~~] be responsible to document each patient's nursing care and coordinate the provision of interdisciplinary care. [~~on a plan of care.~~~~

~~(~~e~~b) Nursing care documentation shall include the assessments of patient's needs, [~~nursing~~] clinical diagnoses, intervention identified to meet the patient's needs, nursing care provided and the patients response [~~to~~], [~~and~~] the outcome of the care provided, and the ability of the patient, family, or designated caregiver [~~and if needed their significant other~~] in managing the continued care after discharge.~~

~~(~~d~~c) [~~Patients shall receive instructions prior to discharge, and referrals for follow-up care shall be documented in the record~~] Patients shall receive prior to discharge written instructions and referral for follow-up care.~~

[~~(4) Training and Education Programs:~~

~~Education and training programs for nursing department or service personnel shall be ongoing and designed to augment their knowledge of pertinent new developments in patient care:~~

~~(a) Educational programs must include training:~~

~~(i) Fire, safety, and disaster training;~~

~~(ii) Infection control;~~

~~(iii) Cardiopulmonary resuscitation;~~

~~(iv) Patient care education.~~

~~(b) Participation of each nursing staff member shall be documented.~~

~~(c) New nursing department or service personnel shall receive orientation to prepare them for their specific duties and responsibilities in the hospital.~~

~~(d) Professional books and current nursing periodicals shall be available to nursing personnel.~~

~~(5) Policies and Procedures:~~

~~Written policies and procedures shall define and describe the scope and conduct of patient care provided by the nursing staff.~~

~~(a) Policies and procedures shall be reviewed annually and revised as necessary.~~

~~(b) Policies and procedures shall relate to:~~

~~(i) Assignment of nursing care;~~

~~(ii) Acknowledgment, coordination, and implementation of diagnostic and therapeutic orders of staff members;~~

~~(iii) Administration of medications according to state and federal laws;~~

~~(iv) Reporting medication errors and procedures for adverse drug reactions;~~

~~(v) Confidentiality;~~

~~(vi) Discharge planning;~~

~~(vii) Patient and family education;~~

~~(viii) Maintenance of required records, reports, and statistical information;~~

~~(ix) Cardiopulmonary resuscitation;~~

~~(x) Fire, safety, and disaster;~~

- (xi) Scope of activity of volunteers or paid attendants;
- (xii) Any special care units;
- (xiii) Telephone orders.
- (6) [Organizational Plan:
- The nursing department or service shall have a written organizational plan consistent with the patient services offered and scope of nursing care activities:
- (a) Nursing department or service personnel shall meet at least monthly, to identify problems in nursing care and propose solutions. This function may be performed on a department or service unit level. A written record shall be maintained.
- (b) All individuals employed as licensed practical or registered nurses shall be licensed by the state.
- (c) There shall be written job descriptions for each individual and each job classification. Job descriptions shall be reviewed annually and revised as needed.
- (d) All nursing department or service personnel shall have a yearly performance appraisal based on written standards and job descriptions.
- (7) Quality Assurance:
- The nurse administrator is responsible for assuring review and evaluation of the quality and appropriateness of nursing care:
- (a) The review and evaluation may be performed by the nursing department/service as a whole, by a designated committee, by clinical departments or services, or by nursing units:
- (b) The review shall be based on written criteria and may include:
- (i) Patient observations;
- (ii) Medical record;
- (iii) Any incident reports.]

R432-100-[14]13. [Special]Critical Care Unit.

(1) Hospitals that provide critical care units shall comply with the requirements of R432-100-13. [~~are not required to provide special care units. If the hospital provides the service, subsections R432-100-14(1) through R432-100-14(7) apply.~~]

[~~(1) Medical Direction:~~

— (a) The unit(s) shall be under the medical direction of a qualified physician who is a member of the active medical staff who has received specialty training, acquired experience, and demonstrated competence. [~~Medical direction for the unit(s) shall be according to the scope of services provided as delineated in hospital policy and approved by the governing board.~~

[~~(b) The director is responsible for making decisions, in consultation with the physician responsible for the patient, for the disposition of the patient when the patient load exceeds operational capacity.~~]

(2) [Unit Nursing Manager:

—]Critical care [U]unit nursing direction shall be vested in a designated, qualified registered nurse manager who has relevant education, training and experience in critical care. The supervising nurse shall coordinate the care provided by all nursing service personnel in the critical care unit. [~~The manager shall report to the director of nurses.~~] [~~He~~]The manager shall have administrative responsibility for the critical care unit, assuring that a registered nurse who has advanced life support certification is on duty and in the unit at all times.

(3) [Equipment:

—]Each critical care unit [is]shall be designed and equipped to facilitate the safe and effective care of the patient[s] population served. Equipment and supplies shall be available to the unit as determined by hospital policy in accordance with the needs of the patients.

[~~(a) The following equipment shall be available within the unit:~~

- (i) Beds that do not hinder the provision of emergency care;
- (ii) Wall and portable oxygen, compressed air, and suction;
- (iii) Cardiac defibrillator with synchronization capability;
- (iv) Respiratory and cardiac monitoring equipment;
- (v) Mechanical ventilatory assistance equipment, including: airways, manual breathing bags, ventilators or respirators;
- (vi) Infusion pumps;
- (vii) Thoracentesis and closed thoracostomy sets;
- (viii) Tourniquets;
- (ix) Vascular cutdown sets;
- (x) Laryngoscope and endotracheal tubes;
- (xi) Tracheobronchial and gastric suction equipment;
- (xii) Portable x-ray; and
- (xiii) Patient weighing device for bed patients:
- (b) Mechanical ventilators shall be available within or in close proximity to the unit:
- (c) All equipment including beds shall be kept in working order and shall be grounded as needed for proper operation and to prevent shock or harmful discharge.]

— (c) All equipment including beds shall be kept in working order and shall be grounded as needed for proper operation and to prevent shock or harmful discharge.]

([d]4) An emergency cart [within]must be readily available to the unit and contain[s] appropriate drugs and equipment according to hospital policy. The cart, or the cart locking mechanism, [is]must be checked every shift and after each use to assure that all items required for immediate patient care are in place in the cart and in usable condition.

[~~(4) Support Services:~~

(5) The following support services shall be immediately available to the [special]critical care unit on a 24-hour basis:

- (a) Blood bank or supply;
- (b) Clinical laboratory;
- (c) Radiology services.

[~~(5) Medical Records:~~

— The medical records for patients in a critical care unit shall conform to the requirements of the Medical Records Section R432-100-35:

— (6) In-service Education:

— All staff shall participate in an ongoing program of in-service education. This program shall include at least the following:

- (a) Use of equipment;
- (b) Safety, including electrical safety;
- (c) Infection control;
- (d) Administration of medications;
- (e) Recognizing and recording signs and symptoms, that may require notification of, or intervention by, the physician; and
- (f) Emergency procedures.

— (7) Policies and Procedures:

— The Special Care Unit shall develop and implement policies and procedures to include at least the following:

- (a) Administration of medications and intravenous therapy;
- (b) Admission to and discharge from, including a priority determination;
- (c) Infection control and safety practices;
- (d) Traffic control and patient privacy;

— (e) Special procedures for medical emergencies including cardiopulmonary resuscitation, cardio defibrillation, endotracheal intubation, tracheostomy, and others;

— (f) Observation and isolation;

— (g) Unit organization including channels of communication, authority, and relationship of unit to other hospital services;

— (h) An incident-reporting system that includes:

— (i) Mandatory reporting to the attending physician or the chief of the medical staff, or the appropriate hospital committee;

— (ii) Mandatory review by the appropriate hospital committee;

— (iii) Steps taken to prevent recurrence of the incident.]

(6) If the hospital provides dialysis services, the dialysis services shall comply with R432-650 End Stage Renal Disease Facility Rules, sections R432-650-8, Required Staffing; and R432-650-13, Water Quality.

[R432-100-13. Ambulatory Surgery:

— (1) Organization:

— Any ambulatory surgical services provided by the hospital shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of service provided.

— (a) The relationship, objective, and scope of all ambulatory surgical services shall be specified in writing:

— (b) The standards for ambulatory surgery shall meet the same standards and quality of care that apply to inpatient care (see R432-100-21):

— (c) Responsibility for the administrative direction of the Ambulatory Surgery Service provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator:

— (i) The qualifications and appointment of director shall be approved by the medical staff:

— (ii) The responsibilities and duties of the director shall be defined in writing and these duties and responsibilities shall be approved by the medical staff:

— (d) Responsibility for medical direction shall be defined in writing and vested in one or more members of the medical staff:

— (e) Qualified registered nurses shall supervise the provision of ambulatory surgical nursing care. Qualified nursing service personnel shall be available to provide the nursing care required during all phases of the patient's hospital stay:

— (2) Policies and Procedures:

— When surgical services are provided in an ambulatory care setting, the policies and procedures shall be consistent with those applicable to surgery and anesthesia and shall include the following:

— (a) Types of elective operative procedures that may be performed and where they may be performed;

— (b) Scope of anesthesia services provided and where they may be administered;

— (c) Pre-operative and post-operative transportation;

— (d) A method of intervention when the designated pre-operative patient workup and preparation are incomplete. An operation shall be performed only after a history, physical examination, and any required laboratory and x-ray examinations have been completed, and the pre-operative diagnosis has been recorded;

— (e) Post-operative care, including post-anesthesia patient care guidelines and the role of family members assisting in patient care;

— (f) Written discharge instructions:

— (3) Medical Records:

— (a) A medical record shall be maintained for every patient receiving ambulatory surgical services:

— (b) Complete and accurate records shall be maintained and shall be available to the other professional services of the hospital. The outpatient medical record shall be integrated with the patient's overall hospital record or identification system:

— (c) The medical record for ambulatory surgical patients shall include written discharge instructions:

— (d) If a patient is admitted to the hospital after undergoing surgery as an outpatient, the medical record shall contain documentation of the reason for change in the patient's status:

— (4) Quality Assurance:

— (a) The medical director of the ambulatory surgery service is responsible for assuring that a review and evaluation of ambulatory surgical services is performed at least twice a year:

— (b) The quality assurance program shall include everything required by subsection R432-100-9 plus:

— (i) A systematic review and evaluation of surgical patients who require hospitalization after ambulatory surgery:

— (ii) A means of assuring that outpatients who undergo surgery under other than local anesthesia receive the same pre-operative and post-operative evaluations as inpatients undergoing the same surgical procedures.]

R432-100-~~21~~14. [Surgery]Surgical Services.

(1) [Organization:

— (a) Any ~~s~~ surgical services provided by the hospital shall be integrated with other departments or services of the hospital. The relationship, objective, and scope of all surgical services shall be specified in writing.

[— (b) Responsibility for the administrative direction of the inpatient surgery services provided by the hospital shall be vested in a person appointed and authorized by the administrator. The qualifications and appointment of the director shall be approved by the medical staff. The responsibilities and duties of the director shall be designated in writing and shall be approved by the medical staff.]

[(~~e~~)a] Responsibility for the medical direction of [~~the surgery~~]surgical services shall be vested in a member of the medical staff.

[(~~d~~)b] Qualified registered nurses shall supervise the provision of surgical nursing care. [— Qualified nursing service personnel shall be available to provide the nursing care required during all phases of the patients' hospital stay:

— (c) The surgery service shall be integrated with other departments and services:]

[(~~f~~)c] The operating room suites shall be directed and supervised by a qualified registered nurse. The supervisor shall have authority and responsibility for:

(i) Assuring that the planned procedure is within the scope of privileges granted to the physician.

(ii) Maintaining the operating room register;

(iii) Other administrative functions, including serving on patient care committees.

[(~~g~~)d] The hospital shall establish a policy governing the use of obstetrical delivery and operating rooms to ensure that any patient with parturition imminent, or with an obstetrical emergency requiring immediate medical intervention to preserve the health and

life of the mother or her infant, is given priority over other obstetrical and non-emergent surgical procedures.

~~(h)e~~ Qualified surgical assistants shall be used as needed in operations in accordance with hospital by-laws.~~[A qualified assistant is any individual designated in writing by the hospital authorities or medical staff as having sufficient training to assist in a surgical procedure.]~~

~~(i)f~~ Surgical technicians and licensed practical nurses may serve as scrub nurses under the direct supervision of a registered nurse, but may not function as circulation nurses in the operating rooms, unless the scrub nurse is a registered nurse.

(g) Outpatient surgical patients shall not be routinely admitted to the hospital as inpatients. A systematic review process shall evaluate patients who require hospitalization after outpatient surgery.

~~(2) [Facilities and Equipment:~~

~~(a)~~ A safe operating room environment shall be established, controlled and consistently monitored.

~~(b)a~~ Surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

~~(i)b~~ Traffic in and out of the operating room shall be controlled. There shall be no through traffic.

~~(ii)~~ The physical facilities, work surfaces, and equipment shall be maintained in a sanitary condition.

~~(iii)~~ An auxiliary power system shall be available.

~~(iv)~~ Equipment shall be in operable condition.

~~(A)~~ Electrical safety records shall be maintained.

~~(B)~~ Equipment performance shall be verified.]

~~(v)c~~ There shall be a scavenging system for evacuation of anesthetic waste gases.

~~(vi)~~ Precautions to eliminate hazards of burns, fires and explosions shall be taken.]

~~(vii)d~~ The following equipment shall be available to the operating suite:

~~(A)i~~ Call-in system;

~~(B)ii~~ Cardiac Monitor;

~~(C)iii~~ Ventilation support system;

~~(D)iv~~ Defibrillator;

~~(E)v~~ Aspirator;

~~(F)vi~~ Equipment for Cardiopulmonary Resuscitation.

~~(3) [Anesthesia.]~~ The administration of anesthetics shall conform to the requirements of the Anesthesia Section R432-100-~~[24]15~~.

~~(4) Medical Records:~~

~~Surgical records shall conform to the Medical Records Section, R432-100-35.~~

~~(a)~~ The surgical records shall justify the diagnosis and operation by:

~~(i)~~ Recorded evidence of pre-operative study;

~~(ii)~~ A record of the surgeon's pre-operative diagnosis;

~~(iii)~~ An operative report describing description of findings, the technical procedures used, the specimen removed, the postoperative diagnoses, and the name of the primary surgeon and any assistants, written or dictated by the surgeon within 24 hours after the operation;

~~(iv)~~ A history, physical, and lab report in the chart of each patient prior to surgery;

~~(v)~~ Evidence of consent.

~~(b)~~ There shall be a complete and current operating room register.

~~(5) Policies and Procedures:~~

~~(a)~~ The operating room shall have written policies and procedures to assure provision of efficient and safe care to patients who undergo surgery. These policies and procedures shall be approved by the medical staff, reviewed annually, and revised as necessary.

~~(b)~~ They shall include:

~~(i)~~ Delineation of surgical privileges for all physicians who may participate in surgery;

~~(ii)~~ Job descriptions and responsibilities;

~~(iii)~~ Organization;

~~(iv)~~ Infection control;

~~(A)~~ Sterilization, disinfection, and decontamination;

~~(B)~~ Procedure for the reporting and recording of all infections of clean surgical cases;

~~(v)~~ Quality assurance;

~~(vi)~~ Safety practices;

~~(vii)~~ Emergency procedures, including:

~~(A)~~ Internal and external disaster plans;

~~(B)~~ Provision for back-up surgeons when the chief surgeon is incapable of continuing the procedure;

~~(viii)~~ Patient care requirements;

~~(ix)~~ Appropriate clothing and footwear;

~~(x)~~ Procedures for verifying the patient's informed consent;

~~(xi)~~ Post-anesthesia recovery;

~~(xii)~~ An incident-reporting system;

~~(xiii)(4)~~ Removal of surgical specimens shall be in conformance with the Laboratory and Pathology Section, R432-100-~~[26]22~~.

R432-100-~~[24]15~~. Anesthesiology Services.

~~(1) [Organization:~~

~~(a)~~ There shall be facilities and equipment for the administration of anesthesia commensurate with the clinical and surgical procedures planned for the institution. Anesthesia care shall be available on a 24-hour basis.~~[Anesthesia may be provided by individual contractors or may be provided by the hospital.]~~

~~(b)a~~ Responsibility for the administrative direction of anesthesia services~~[provided by the hospital]~~ shall be vested in a person appointed and authorized by the hospital administrator.~~[The qualifications and appointment of the director shall be approved by the medical staff. The responsibilities and duties of the director shall be defined in writing. These duties and responsibilities shall be approved by the medical staff.]~~

~~(c)b~~ Medical direction shall be according to the scope of services provided as delineated in hospital policy and approved by the governing board.~~[provided by a physician member of the medical staff, preferably by an anesthesiologist or a physician who has specialized training and experience.]~~

~~(d)c~~ Anesthesia care shall be provided by anesthesiologists, other qualified physicians,~~[anesthetists,]~~ dentists, oral surgeons, or Certified Registered Nurse Anesthetists who are members of the medical staff within the scope of their practice and license.

(i) A qualified physician, dentist or oral surgeon shall have documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and shall be able to perform at least the following:

(A) procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, and other pain producing clinical procedures;

(B) ~~support~~ life ~~support~~ functions during the administration of anesthesia, including induction and intubation procedures; and

(C) provide pre-anesthesia and post-anesthesia management of the patient.

~~[(e)ii] The performance of Certified Registered Nurse Anesthetists shall be under the direction of the medical director of the anesthesia service, or the physician responsible for the patient's care. Both the patient and operating surgeon shall be informed prior to surgery when anesthesia is administered by a Certified Registered Nurse Anesthetist.]~~

~~[(e)ii] The responsibilities and privileges of the person administering anesthesia [each qualified anesthetist] shall be clearly defined by the medical staff [or the medical director of anesthesiology and included in detailed job descriptions.]~~

~~[(f) When the operating or anesthesia team consists entirely of non-physicians, a physician shall be immediately available in the facility.]~~

(2) ~~[Equipment:~~

~~(a)]The use of flammable anesthetic agents for anesthesia or for the pre-operative preparation of the surgical field is prohibited.~~

~~[(b)](3) The anesthetic equipment shall be inspected and tested by the [anesthetist] person administering anesthesia before use in accordance with hospital policy. [If a leak or potentially hazardous defect is observed, the equipment shall not be used until the fault is repaired.~~

~~(c) Each anesthetic gas machine shall have a pin-index safety system and an oxygen pressure-index safety system or equivalent.~~

~~(3) Policies and Procedures.~~

~~(a) There shall be written policies approved by the medical staff relating to the delivery of anesthesia care, anesthesia safety and operating room hazards. They shall be reviewed annually and enforced through an organized quality assurance program.~~

~~(b) The policies shall provide for at least the following:~~

~~(i) A pre-anesthesia evaluation of the patient by a member of the medical staff including documentation in the chart regarding the choice of anesthesia and the surgical or obstetrical procedure anticipated. This evaluation shall be recorded prior to administration of anesthesia. This entry shall include any previous drug history, other anesthetic experience, and any potential anesthetic problems;~~

~~(ii) A review of the patient's condition immediately prior to induction of anesthesia. This shall include a review of the medical record and consent form with regard to completeness of laboratory data, time of administration and dosage of pre-anesthesia medication, if any, and an appraisal of any comparative changes in the patient's condition.~~

~~(iii) A safety check of the equipment to ensure:~~

~~(A) the readiness, availability, cleanliness, sterility when required, and working condition of all equipment used in the administration of anesthetic agents prior to administering the anesthesia;~~

~~(B) the cleanliness of laryngoscope, airways, breathing bags, masks, endotracheal tubes, and all reusable anesthesia equipment in direct contact with the patient;~~

~~(C) the familiarization by all anesthesia personnel with the rate, volume, humidity control, and mechanism of air exchange within the surgical and obstetrical suites.~~

~~(iv) Procedures for the anesthetist or his qualified designee(s) to remain with the patient until responsibility for proper patient care has been assumed by other qualified individuals. Personnel responsible for post-anesthetic care shall be advised of specific problems presented by the patient's condition.~~

~~(v) A mechanism for the release of patients from any post-anesthesia care unit.~~

~~(A) When the responsible physician or surgeon has not issued a written order or authenticated a verbal release, the name of the physician or surgeon responsible for the patient's release shall be recorded in the medical record. Telephone orders shall be signed by the physician within 24 hours.~~

~~(B) When the physician or surgeon is not available at the time of release, discharge criteria developed and approved by the medical staff may be used by the nursing staff as the basis for a decision to discharge a patient from any post-anesthesia care. The criteria shall be comprehensive, assure the same standard of care for all patients, and be enforced by the director.~~

~~(vi) A record of all pertinent events during the induction of, maintenance of, and emergence from anesthesia, including the dosage and duration of all anesthetic agents, other drugs and treatments, intravenous fluids, and blood or blood components.~~

~~(vii) A record of post-anesthetic visits.~~

~~(A) One visit shall be made early in the post-operative period. The number of subsequent visits shall be determined by the status of the patient in relation to the procedure performed and anesthesia administered.~~

~~(B) Each post-anesthesia note shall specify the date and time of visit and the presence or absence of anesthesia related complications.~~

~~(C) The time of discharge from the recovery room shall be listed in the patient's recovery room record.~~

~~(D) All anesthesia personnel shall make pertinent post-anesthetic entries in the medical records of patients to whom they have administered anesthesia.~~

~~(E) If the record entry by anesthesia personnel is not feasible because of early patient release from the hospital, the discharging physician or dentist is responsible for meeting the requirement.~~

~~(viii) Written guidelines defining the role of anesthesia service and of all post-anesthesia care areas in the hospital's infection control program. Equipment designed for reuse shall be sterilized or disinfected before each use.~~

~~(ix) The quality assurance program for anesthesia service shall include procedures for biennial review by an anesthesiologist of all anesthesia equipment, personnel, practices, charts (anesthesia morbidity-mortality), and facilities.]~~

R432-100-[15]16. Emergency Care Service.

(1) ~~[The]Each~~ hospital shall evaluate~~[es]~~ and classify~~[tes]~~ itself to indicate its capability in providing emergency care.

(a) Level ~~[+]~~~~[=]~~ offers comprehensive emergency care 24 hours a day in-house, with at least one physician experienced in emergency care on staff in the emergency care area. There ~~[is]~~~~shall~~ be in-hospital support by members of the medical staff for at least

medical, surgical, orthopedic, obstetric, pediatric, and anesthesia services. Specialty consultation ~~[is]~~shall be available within 30 minutes, or two-way voice communication is available for the initial consultation.

(b) Level II~~[-]~~ offers emergency care 24 hours a day, with at least one physician experienced in emergency care on duty in the emergency care area, and with specialty consultation available within 30 minutes by members of the medical staff.

(c) Level III~~[-]~~ offers emergency care 24 hours a day, with at least one physician available to the emergency care area within approximately 30 minutes through a medical staff call roster. Specialty consultation ~~[is]~~shall be available by request of the attending medical staff member by transfer to a level I or level II hospital where care can be provided.

(d) Level IV offers emergency first aid treatment to patients, staff, and visitors; and to persons who may be unaware of, or unable to immediately reach services in other facilities.

(2) ~~[Organization:~~

~~—]The emergency service shall be organized and staffed[provided] by qualified individuals [;] based on[the community need and] the defined capability of the hospital.[The service shall be staffed according to the nature and extent of health care needs anticipated in the scope of services offered.]~~

~~(a) Responsibility for the administrative direction of the emergency services provided by the hospital shall be vested in an individual appointed and authorized by the hospital administrator.[The qualifications and appointment of the director shall be approved by the medical staff. The responsibilities and duties of the director shall be defined in writing. These duties and responsibilities shall be approved by the medical staff.]~~

~~(b) Responsibility for medical direction shall be defined in writing and vested in one or more members of the medical staff.[The medical staff shall define and provide coverage and back-up of the emergency service.]The medical staff shall provide back-up and on-call coverage for emergency services and as needed for emergency speciality services.~~

~~(c) The evaluation and treatment of a patient who presents himself or is brought to the emergency care area shall be the responsibility of a [physician]licensed practitioner.~~

~~(d) The priority[;] [with]by which persons seeking emergency care [shall be]are seen by a physician[;] may be determined by trained personnel using guidelines established by the emergency room director [or]and approved by the medical staff.~~

~~(e) Rosters designating medical staff members on duty or on call for primary coverage and specialty consultation shall be posted in the emergency care area.~~

~~(f) A designated registered nurse who is qualified by relevant training, experience, and current competence in emergency care shall supervise the care provided by all nursing service personnel in the department.~~

~~(i) The number of nursing service personnel shall be sufficient for the types and volume of patients served.~~

~~(ii) Level I and II emergency departments shall have at least one registered nurse with Advanced Cardiac Life Support certification, and sufficient number of other nursing staff assigned and on duty within the emergency care area.[Level III emergency departments shall have a registered nurse with Advanced Trauma Life Support certification on an on-call basis at all times.]~~

~~(iii) The emergency nurse supervisor shall participate in internal committee activities concerned with the emergency service.~~

~~(g) The emergency service shall be integrated with other departments in the hospital.~~

~~(i) Clinical laboratory services with the capability of performing all routine studies and standard analyses of blood, urine, and other body fluids shall be available[24 hours a day for Level I and Level II and within 30 minutes for Level III.] A supply of blood shall be available at all times.~~

~~(ii) Diagnostic radiology services shall be available at all times.~~

~~(h) The duties and responsibilities of all personnel, including physicians and nurses, providing care within the emergency service area shall be defined in writing.~~

~~(3) [Emergency Plan:~~

~~—]The hospital shall define its scope of emergency services in writing and implement a plan for emergency care, based on community need and on the capability of the hospital.~~

~~(a) Each hospital shall comply with federal anti-dumping regulations as defined in CFR 489.20 and 489.24.[The hospital shall have a procedure whereby the ill or injured person can be assessed and either treated or referred to an appropriate facility:~~

~~— (i) Prior to transfer, the hospital shall perform the emergency procedures needed to minimize aggravation of the patient's condition during transport to another health care facility.~~

~~— (ii) The patient shall not be transferred until the receiving facility has consented to accept the patient.~~

~~— (iii) Responsibility for the patient and his records during transfer shall be established.~~

~~— (iv) Any record of definitive care shall be sent with a patient transferred to another facility.]~~

~~(b) The role of the emergency service in the hospital's[internal and external] disaster plans shall be defined.~~

~~(c) There shall be a communication system that permits instant contact with law enforcement agencies, rescue squads, ambulance services, and other emergency services within the community.~~

~~(d) Emergency department policies and protocols shall address the care, security, and control of prisoners or people to be detained for police or protective custody.~~

~~(e) Emergency department policies and protocols shall address the provision of care to an unemancipated minor not accompanied by parent or guardian, or to an unaccompanied unconscious patient.~~

~~(f) Emergency department policies and procedures shall address the evaluation and handling of alleged or suspected child or adult abuse cases. Criteria shall be developed to alert emergency department and service personnel to possible child or adult abuse. The criteria shall address:~~

~~(i) suspected physical assault;~~

~~(ii) suspected rape or sexual molestation;~~

~~(iii) suspected domestic abuse of elders, spouses, partners and children;~~

~~(iv) the collection, retention, and safeguarding of specimens, photographs, and other evidentiary materials;~~

~~(v) visual and auditory privacy during examination and consultation of patients.~~

~~(g) A list shall be available in the emergency department of private and public community agencies and resources that provide, arrange, evaluate and care for the victims of abuse.~~

(h) Emergency department policies and procedures shall address the handling of hazardous materials and contaminated patients.

(i) Emergency department policies and procedures shall address the reporting of persons dead-on-arrival to the proper authorities including the legal requirements for the collection and preservation of evidence.

(4) The hospital shall in a timely manner make reasonable effort to contact the guardian, parents, or next of kin of any unaccompanied minor, or any unaccompanied unconscious patient admitted to the emergency department.

~~[(4) Personnel:~~

~~All personnel and physicians shall be prepared for their emergency-care responsibilities through training and education programs:~~

~~(a) A planned, formal orientation program shall be required for all registered and licensed nurses, and for specified professional personnel who provide patient care in the emergency service. The program shall include training in:~~

~~(i) Recognizing, interpreting, and recording patient's signs and symptoms;~~

~~(ii) Initiation of cardiopulmonary resuscitation and other related life-support procedures (Advanced Cardiac Life Support);~~

~~(iii) Parenteral administration of electrolytes, fluids, blood and blood components;~~

~~(iv) Wound care and management of sepsis;~~

~~(v) Initial burn care;~~

~~(vi) Initial management of injuries to extremities and central nervous system;~~

~~(vii) Effective and safe use of electrical and electronic life support and other equipment used in the department;~~

~~(viii) Prevention of contamination and cross infection;~~

~~(ix) Recognition of, and attention to, the psychological and social needs of patients and their families.~~

~~(b) All emergency service personnel and physicians shall participate in in-service education programs. The extent of participation shall be documented and shall be related to the size of the staff and to the scope and complexity of the emergency care service provided:~~

~~(c) An approved CPR training program shall be conducted at least annually, or more often when necessary, for all persons providing patient care in the emergency service to assure proficiency in the delivery of CPR:~~

~~(5) Policies and Procedures:~~

~~(a) There shall be written policies and procedures, approved by the medical staff and hospital administration, specifying the scope and conduct of patient care provided in the emergency service. The policies and procedures shall be reviewed annually, revised as necessary, and dated to indicate the time of the last review, and enforced by the director:~~

~~(b) The policies and procedures shall address the following:~~

~~(i) Location, storage, procurement and dispensing of medications, blood, supplies, and equipment;~~

~~(ii) Provision of care to an unemancipated minor not accompanied by parent or guardian, or to an unaccompanied unconscious patient;~~

~~(iii) Circumstances under which the patient's personal physician shall be notified or given reports;~~

~~(iv) Confidentiality of patient information and the safeguarding of records;~~

~~(v) Release of authorized information and materials to police or health authorities;~~

~~(vi) Transfer and discharge of patients;~~

~~(vii) The emergency medical record, including any consent for treatment;~~

~~(viii) Infection control measures, including procedures designed to eliminate the possibility of contamination and cross infection;~~

~~(ix) Procedures to be followed in the event of equipment failure;~~

~~(x) Pertinent safety practices;~~

~~(A) Control of traffic, including visitors;~~

~~(B) The handling and safekeeping of patients' valuables;~~

~~(C) Assuring patients are not left unattended;~~

~~(D) Protecting patients from physical, emotional and environmental hazards;~~

~~(E) Protecting patients from self inflicted injuries;~~

~~(F) Dispensing medications according to hospital policy;~~

~~(xi) The role of the emergency department/service in the hospital disaster plans;~~

~~(xii) Specification of the scope of treatment allowed, including the use of anesthesia and general and specific procedures that may not be performed by medical staff in the emergency department/service;~~

~~(xiii) Who, other than physicians, may perform special procedures, under what circumstances, and under what degree of supervision. Such procedures may include:~~

~~(A) Cardiopulmonary resuscitation, including cardiac defibrillation, endotracheal intubation, tracheostomy or cricothyrotomy;~~

~~(B) Endotracheal Intubation;~~

~~(C) Percutaneous tracheostomy or cricothyrotomy;~~

~~(D) The administration of parenteral antiarrhythmic and other specified medications; and~~

~~(E) Obtaining arterial and venous blood samples or other laboratory specimens;~~

~~(xiv) The use of standing orders;~~

~~(xv) Circumstances that require the patient's return to the emergency department or service for treatment;~~

~~(xvi) Handling of alleged or suspected child or adult abuse cases. Criteria that alerts emergency department or service personnel to possible child or adult abuse. Criteria shall be developed to include:~~

~~(A) Physical Assault;~~

~~(B) Rape or sexual molestation;~~

~~(C) Domestic abuse of elders, spouses, partners and children.~~

~~(xvii) Procedures for the evaluation of patients who meet the criteria in R432-100-15(5)(xvi)(A-C). Criteria for an adequate medicolegal evaluation shall include:~~

~~(A) examination and treatment;~~

~~(B) patient consent;~~

~~(C) collection, retention, and safeguarding of specimens, photographs, and other evidentiary material;~~

~~(D) maintaining a detailed receipt for all material released; and~~

~~(E) as legally required, notification of and release of information to the proper authorities.~~

— (F) Examination of, and consultation with the patient shall take place only when visual and auditory privacy are assured;

— (G) A list is maintained in the emergency department or service of private and public community agencies that provide, or arrange for, evaluation and care for the victims of abuse, and referrals are made:

— (xviii) The management of pediatric emergencies;

— (xix) Reporting persons dead-on-arrival to the proper authorities, including legal requirements for the collection and preservation of evidence;

— (xx) Handling hazardous materials and contaminated patients.

— (6) Facilities and Equipment:

— (a) The emergency service shall be designed and equipped to facilitate the safe and effective care of patients.

— (b) It shall include the following:

— (i) The emergency service shall be close to, and on the same level as the emergency entrances.

— (A) The outside entrance shall be clearly identified and accessible to emergency vehicles.

— (B) The entrance doors shall be well lit and protected from the weather.

— (C) Stretchers and wheelchairs shall be immediately available to the emergency entrance.

— (ii) Space shall be provided for the examination and treatment of patients seeking emergency care.

— (iii) Rapid communications with other departments in the hospital shall be assured.

— (iv) The following equipment shall be available to the emergency service:

— (A) Oxygen, and the means of administration;

— (B) Ventilatory assistance equipment;

— (C) Cardiac defibrillator with synchronization capability;

— (D) Respiratory and cardiac monitoring equipment;

— (E) Thoracentesis and closed thoracostomy sets;

— (F) Tracheostomy set;

— (G) Tourniquet;

— (H) Vascular cut-down sets;

— (I) Laryngoscope and endotracheal tubes;

— (J) Tracheobronchial and gastric suction equipment;

— (K) Urinary catheters and closed volume urinary systems;

— (L) Pleural and pericardial drainage set;

— (M) Minor surgical instruments;

— (N) Splinting devices and casting materials;

— (O) Emergency obstetrical packs.

— (P) Set of pneumatic trousers with three compartments and inflation equipment (one adult and one child size);

— (Q) Decontamination facilities.

— (v) The following supplies shall be available for immediate use:

— (A) Standard drugs;

— (B) Antivenin;

— (C) Common poison antidotes;

— (D) Syringes and needles;

— (E) Parenteral fluids and infusion sets;

— (F) Plasma substitutes and blood administration sets;

— (G) Surgical supplies.

— (vi) Emergency drug carts or emergency drug storage areas shall be checked at least once per shift and after each use to assure

that all items that must be immediately available are actually in the cart and in usable condition:

— (vii) There shall be refrigerated storage within the emergency service for biologicals and other supplies:

— (7) Medical Records:

— A medical record shall be maintained on every patient seeking emergency care and shall be incorporated into the patient's permanent hospital records. (See R432-100-35)

— (8) Quality Assurance:

— The director of the emergency service is responsible for assuring that a timely review of emergency patient care is performed and documented:

— (a) The review shall involve the use of the medical record and pre-established criteria. Particular attention shall be given to individuals who die in the emergency service area or within 24 hours of admission from the emergency service.

— (b) Regularly scheduled conferences shall be held with medical and nursing staff to improve the quality of emergency care:]

R432-100-[16]17. [~~Obstetrical~~]Perinatal Services.

(1) [Organization:

— (a)]Each hospital shall comply with the requirements of this section.

([b]a) Responsibility for the administrative direction of [the obstetrical]perinatal services provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator.

[— (i) The qualifications and appointment of the medical director shall be approved by the medical staff.

— (ii) The responsibilities and duties of the director shall be defined in writing:

— (iii) These duties and responsibilities shall be approved by the medical staff:]

([c]b) [The m]Medical direction for [obstetrical]perinatal services shall be provided by a qualified member of the medical staff.

[— (d) The hospital shall establish a well defined program of continuing education for all employees in the obstetrical area, and individuals with obstetrical privileges. The extent of the education program shall be related to the scope and complexity of obstetrical services provided:]

(c) The hospital shall establish and implement security protocols for perinatal patients.

([e]d) A qualified registered nurse shall be immediately available.

(2) The perinatal department shall include facilities and equipment for labor and delivery, nursery, postpartum, and optional birthing rooms. [Facilities and Equipment:]

(a) [Obstetrical]Perinatal areas shall be located and arranged to avoid non-related traffic to and from other areas.

(b) The hospital shall isolate patients with infections or other communicable conditions, [inimical to the safety and welfare of other patients:] The use of maternity rooms for patients other than maternity patients shall be restricted [to clean gynecological or other clean surgical patients] according to hospital policy.

[— (c) The obstetrical department shall include facilities and equipment for labor and delivery, nursery, postpartum and optional birthing rooms:]

(3) ~~[Labor and Delivery:]~~Each hospital shall have access to at least one surgical suite for operative delivery.

~~[(a) Each institution shall maintain at least one delivery room.]~~

~~[(b)a] Equipment and supplies shall be maintained for the mother and newborn, including:~~

- ~~(i) Furnishings suitable for labor, birth, and recovery;~~
- ~~(ii) Oxygen with flow meters and masks or equivalent;~~
- ~~(iii) Mechanical suction and bulb suction immediately available;~~
- ~~(iv) Resuscitation equipment;~~
- ~~(v) Emergency medications, intravenous fluids, and related supplies and equipment;~~
- ~~(vi) A device to assess fetal heart rate;~~
- ~~(vii) Equipment to monitor and maintain the optimum body temperature of the newborn;~~
- ~~(viii) A clock capable of showing seconds;~~
- ~~(ix) Adjustable examination light;~~

~~[(x) Covered or closed containers for soiled linen and waste materials;~~

~~[(xi) Anesthesia equipment appropriate to the level of anesthesia given;~~

~~[(xii) Sterile sutures, linens, and instruments packaged and dated for use;]~~

~~[(x[xiii]) A warming unit with temperature controls that comply with Underwriters' Laboratories requirements. The unit shall be capable of administering oxygen and suctioning;~~

~~[(xiv) A nurse call system;~~

~~[(xv) A delivery room record book with chronological entries of deliveries including items pertinent to the history of each delivery.]~~

~~(b) The hospital shall maintain a delivery room record keeping system for cross referencing information with other departments.~~

~~(4) If birthing rooms are provided, they shall be equipped in accordance with 100-17(3(a).~~

~~[(4) Post-Partum:~~

~~Facilities, equipment, and supplies shall be available that include:~~

- ~~(a) Resuscitative equipment;~~
- ~~(b) Nurse call system;~~
- ~~(c) Emergency medications, intravenous fluids, and related supplies;~~
- ~~(d) Capabilities for isolation.~~

~~(5) Birthing Rooms:~~

~~If birthing rooms are provided, there shall be equipment and supplies in or near the birthing rooms that include:~~

- ~~(a) Furnishings suitable for labor, birth, and recovery;~~
- ~~(b) Oxygen with flow meters and masks or their equivalent;~~
- ~~(c) Mechanical suction and bulb suction;~~
- ~~(d) Resuscitation equipment including resuscitation bags, endotracheal tubes, and oral airways for mother and newborn;~~
- ~~(e) Firm surfaces for resuscitation;~~
- ~~(f) Emergency medications, intravenous fluids, and related supplies for both mother and newborn;~~
- ~~(g) A device to assess and monitor fetal heart rate;~~
- ~~(h) Equipment for monitoring and maintaining the optimum body temperature of the newborn;~~
- ~~(i) A clock capable of showing seconds;~~

~~(j) Sterile suturing equipment and supplies;~~

~~(k) Adjustable examination light; and~~

~~(l) Closed or covered containers for soiled linen and waste materials.~~

~~(6) Policies and Procedures:~~

~~(a) The hospital shall have written policies and procedures approved by the medical staff relating to the safe delivery of obstetrical and newborn care.~~

~~(b) These policies and procedures shall be reviewed annually and enforced through an organized quality assurance program. The policies shall provide for:~~

- ~~(i) Placement, admission, and room assignment of all patients;~~
- ~~(ii) Utilization of personnel;~~
- ~~(iii) Aseptic technique and handwashing;~~
- ~~(iv) Visitation;~~
- ~~(v) Identification of the newborn before removal from the delivery room;~~

~~(vi) Administration by qualified personnel of ante-partum and post-partum oxytocin, ante-partum hypertensives, all I.V. medications, tocolytic agents, central nervous system drugs, and all prescription ante-partum medications;~~

~~(vii) Qualification and licensure of all persons administering medications to newborns;~~

~~(viii) Procedures for handling infected infants;~~

~~(ix) Infection control;~~

~~(x) Quality assurance;~~

~~(xi) Resuscitation of mother or newborn;~~

~~(xii) The use of anesthesia for obstetrical patients;~~

~~(xiii) Emergency transfer of any patient the hospital or staff is not capable of treating;~~

~~(xiv) An incident-reporting system.~~

~~(c) The hospital shall establish a policy governing the use of delivery and operating rooms which insures that any patient who appears with parturition imminent or with an obstetrical emergency which requires immediate medical intervention to preserve the health and life of the mother or her infant is given priority over other obstetrical and non-emergent surgical procedures.~~

~~(d) The hospital's Infection Control Committee (or an equivalent designated committee) shall approve policies and procedures designed to prevent the transmission of infection through the combined use of surgery or obstetrical facilities including:~~

~~(i) shall maintain a system of finding, reporting, and investigating all infections that occur in surgical, obstetrical, or neonatal patients; and~~

~~(ii) keep a record of reports and investigations of all such infection on file.~~

~~(7) Obstetrical and Newborn records shall comply with R432-100-35(8).]~~

~~([8]5) [Other Provisions:]The hospital shall comply with the following provisions:[:]~~

~~(a) No attempt shall be made to delay the imminent, normal birth of a child;~~

~~(b) A prophylactic solution approved by the Department of Health shall be instilled in the eyes of the infant within three hours of birth in accordance with R386-702-9[:];~~

~~(c) Metabolic screening shall be performed in accordance with State Health Laboratory rules developed pursuant to Section 26-10-6.[:]~~

R432-100-17. Nursery;

~~(f)(6)~~ The hospital shall designate its capability to provide nursery care in accordance with the following levels of nursery care as described in the Guidelines for Perinatal Care, Fourth Edition and The Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992 - 1993 Edition.

(a) Level I Basic: Full Term or Well Baby Nursery;

(b) Level II Specialty: Continuous Care Nursery;

(c) Level III Sub-specialty: Newborn Intensive Care Nursery.

~~(7)~~ The nursery area shall provide each~~Each~~ infant ~~shall have~~ with separate equipment and supplies for bathing, dressing, and handling.

~~(2)(a)~~ [Equipment.] There shall be equipment and supplies in or near the nursery that include[s]:

~~(a)~~ (i) An individual bassinet for each infant;

~~(b)~~ (ii) Accurate scales;

~~(c)~~ (iii) Thermometers;

~~(i)~~ A reliable wall thermometer.

~~(b)~~ Temperatures between 70-80 degrees F. shall be maintained in the nursery[?].

~~(ii)(c)~~ There shall be an individual thermometer[?], or one with disposable tips[?], for each infant.

~~(d)~~ The minimum humidity shall be 30 percent;

~~(e)~~ d A supply of medication shall be immediately available for emergencies;

(e) The following equipment and supplies shall be available:

~~(f)~~ A storage area for clean linen;

~~(g)~~ i A covered soiled-diaper container with removable lining;

~~(h)~~ ii A linen hamper with removable bag for soiled linen other than diapers;

~~(i)~~ iii A warming unit with temperature controls that comply with Underwriters' Laboratories requirements;

~~(j)~~ iv Oxygen, oxygen equipment, and suction equipment; and

~~(k)~~ v An oxygen concentration monitoring device. [in working condition;

~~(l)~~ An emergency call system from the nursery to another nearby professionally staffed area;

~~(m)~~ A clean workroom with work counters or tables, and storage for supplies;

~~(n)~~ A clean-up area;

~~(o)~~ A hand washing sink;

~~(p)~~ f Infant [F]ormula storage space shall be available that conforms to the manufacturer's recommendations.

~~(3)~~ g Only single-use bottles shall be used for newborn feeding.

~~(4)~~ 8 A suspect nursery or isolation area shall be available. Equipment and supplies shall be provided for the isolation area.

(a) Isolation facilities shall be used for any infant who:

(i) Has a [transmissible]communicable disease;

(ii) Is delivered of an ill mother infected with a [transmissible]communicable disease;

(iii) Is readmitted after discharge from a hospital; or

(iv) Is delivered outside the hospital.

(b) There shall be separate hand washing facilities for the isolation area.

R432-100-~~19~~18. Pediatric Services.

(1) [Organization:

~~(a)~~ If the hospital provides pediatric services, those services shall be under the direction of [include:

~~(i)~~ An accessible examination or treatment area;

~~(ii)~~ A safe area for diversional play activities;

~~(iii)~~ Medical direction for pediatric services by] a member of the medical staff who is experienced in pediatrics and whose functions and scope of responsibility are defined by the medical staff[?].

~~(f)~~ a A pediatrics qualified registered nurse must~~(to)~~ supervise nursing care and must supervise the documentation of the~~(to be responsible for)~~ implementation of pediatric patient care~~[nursing policies, procedures, and practice]~~ on an interdisciplinary plan of care.

~~(b)~~ If the hospital provides a pediatric unit, it shall also have an interdisciplinary committee responsible for policy development and review of practice in the unit. This committee shall include representatives from the administration, the medical and nursing staff, and rehabilitative support staff.

~~(c)~~ b Hospitals admitting pediatric patients shall have written policies and procedures specifying the criteria for admission to the hospital and conditions requiring transfer when indicated. These policies and procedures shall be based upon the resources available at the hospital, specifically, in terms of personnel, space, equipment, and supplies.

(c) The hospital shall assess all pediatric patients for maturity and development. Information obtained from the maturity and development assessment must be incorporated into the plan of care.

(d) The hospital shall establish and implement security protocols for pediatric patients.

(e) The hospital shall provide a safe area for diversional play activities.

~~(2)~~ Policies and Procedures:

~~(a)~~ Guidelines shall be developed for the placement or room assignment of pediatric patients according to patient acuity under usual, specific, or unusual conditions within the hospital.

~~(i)~~ Infants and children shall be placed in beds where frequent observation is possible.

~~(ii)~~ Decisions regarding room assignments of pediatric patients in the hospital shall incorporate the judgment of a registered nurse and medical staff.

~~(iii)~~ Pediatric patients shall be placed in private rooms or in rooms with peers.

~~(b)~~ There shall be written guidelines for the use of cribs, bassinets, or beds, including the proper use of restraints, side rails, and other safety devices.

~~(c)~~ There shall be policies and procedures specific to both infectious childhood diseases and childhood susceptibility to infections and infection control.

~~(d)~~ Nutritional guidelines shall be developed for pediatric patients to include normal diets and diets for special nutritional needs.

~~(e)~~ Procedures shall be developed to assure that pediatric patients are given accurate doses of drugs and intravenous fluids.

~~(i)~~ The medical staff shall adopt written guidelines for the safe amounts of intravenous fluids that pediatric patients of various ages,

body surface areas, and weights should receive; required weight control and checking procedures; required or recommended use of rate control measuring chambers; and a system to destroy unused doses:

— (ii) Documentation of intravenous therapy including intake and output is required:

— (iii) Procedures for calculating the correct dose of medications or agents shall be available to physicians and to licensed nurses who administer medications:

— (iv) There shall be double-checking procedures for the administration of highly toxic agents or medications, and blood and blood products:

— (v) A list of agents and medication requiring double-checking shall be available in patient care areas:

— (f) A mechanism for consultation with a pediatrician or a physician who has training and experience in pediatrics shall be developed for hospitals admitting infants and pediatric patients:

— (g) Policies shall specify admission assessment requirements for pediatric patients.]

(2) [Facilities and Equipment:

—]Hospitals admitting pediatric patients shall have [the following]equipment and supplies in accordance with the hospital's scope of pediatric services, [in infant and child sizes available to the pediatric area of the hospital:

— (a) Intubation equipment;

— (b) Oxygen masks for the ventilatory bags;

— (c) Blood pressure cuffs;

— (d) Intravenous equipment and supplies;

— (e) Emergency medications;

— (f) Stethoscopes;

— (g) Defibrillator paddles;

— (h) Measuring devices;

— (i) Other appropriate equipment.]

(3) The hospital shall have written guidelines for the placement or room assignment of pediatric patients according to patient acuity under usual, specific, or unusual conditions within the hospital. The guidelines shall address the use of cribs, bassinets, or beds; including the proper use of restraints, bed rails, and other safety devices.

(a) The hospital shall place infant patients in beds where frequent observation is possible.

(b) Pediatric patients other than infants shall be placed in beds to allow frequent observation according to each patient's assessed care needs.

(4) [Personnel:

— (a)]Personnel working with pediatric patients shall have [special]specific training and experience relating to the care of pediatric patients.

(b) Orientation and inservice training for pediatric care staff shall include pediatric specific training on [An in-service program shall be established and address] drugs and toxicology, intravenous therapy, pediatric emergency procedures, infant and child nutrition, the emotional needs and behavioral management of hospitalized children, [and]child abuse and neglect, and other topics according to the needs of the pediatric patients.

R432-100-[30]19. Respiratory Care Services.

(1) [Organization:]

— [(a)]Responsibility for the administrative direction of the respiratory care services provided by the hospital shall be vested in a person authorized by the hospital administrator.

— [(b)]The qualifications and appointment of the director shall be approved by the medical staff. Responsibilities and duties of the director shall be defined in writing and shall be approved by the medical staff.]

[(c)]a The respiratory care service shall be under the medical direction of a member of the medical staff, who has the responsibility and authority for the overall direction of respiratory care services.

[(d)]b When the scope of services warrants, respiratory care services shall be supervised by a technical director who is registered or certified by the National Board For Respiratory Therapy, Inc., or has the equivalent education, training, and experience.

[(e)]c The technical directors shall inform physicians about the use and potential hazards in the use of any respiratory care equipment.

— [(f)]Respiratory care services shall be provided by qualified personnel. The respiratory care services performed shall be commensurate with each person's documented training and experience:

— (g) The scope of the respiratory care services provided to patients shall be defined in writing.]

[(h)]d Respiratory care services shall be provided to patients in accordance with a written prescription of the responsible [physician]licensed practitioner which specifies the type, frequency, and duration of the treatment,[-] and when appropriate, the type and dose of medication, the type of diluent, and the oxygen concentration.

[(2)] Personnel and Education:

— (a) The education, training, and experience of personnel who provide respiratory care services shall be documented:

— (i) Non-physician respiratory care personnel shall perform patient procedures associated with potential hazard only when authorized in writing and in accordance with medical staff policy:

— (ii) Responsibilities of each person shall be clearly defined in organizational plans and job descriptions:

— (b) Respiratory care practitioners shall be trained and oriented to prepare them for their role in the provision of respiratory care services. They shall receive instruction and demonstrate competence in:

— (i) fundamentals of cardiopulmonary physiology fluids, and electrolytes;

— (ii) recognition, interpretation, and recording of signs and symptoms of respiratory dysfunction and medication side effects; particularly those that require notification of a physician;

— (iii) initiation and maintenance of cardiopulmonary resuscitation and other life-support procedures;

— (iv) aseptic techniques to prevent contamination of transfer of infection;

— (v) principles of airway maintenance;

— (vi) effective and safe use of equipment for administering oxygen and other therapeutic gases and for providing humidification, nebulization, and medication;

— (vii) methods that assist in the removal of secretions from the bronchial tree;

— (viii) procedures and observations to be followed during and after extubation;

— (ix) recognition of and attention to the psychological and social needs of the patients and their families;

— (x) the mechanics of ventilation and ventilator function, pulmonary testing, and blood gas analysis.

— (c) cardiopulmonary resuscitation certification for personnel performing respiratory care services shall be conducted at least annually.

— (d) All respiratory care personnel shall participate in a relevant in-service education program that is based in part on the findings of quality assurance activities.

— (3) Policies and Procedures:

— (a) There shall be written policies and procedures specifying the scope and conduct of respiratory care services.

— (b) Policies shall be approved by the medical staff, reviewed annually, revised as necessary, and include the following:

— (i) specific respiratory procedures including who may perform these under what circumstances and degree of supervision;

— (ii) assembly and sequential operation of equipment and accessories;

— (iii) procedures in the event of adverse reaction;

— (iv) procuring, handling, storing, and dispensing of therapeutic gases;

— (v) pertinent safety practices including the control of electrical, flammable, explosive, and mechanical hazards;

— (vi) infection control measures to minimize the possibility of contamination and transfer of infections;

— (vii) administration of medications in accordance with physician's orders;

— (viii) an established method of response to the absence of explicit instruction in prescriptions for respiratory care services;

— (ix) an incident-reporting system;

— (x) the transfer of patients who require respiratory care services not provided by the hospital.

— (4) Equipment:

— (a)(e) The hospital must have [E]equipment[shall be provided] to perform any pulmonary function study or blood-gas analysis provided by the hospital.

[(b) All equipment shall be calibrated and operated according to the manufacturer's specifications.

— (c) The equipment shall be inspected periodically and maintained in working order. Inspection and maintenance shall be documented

— (d) A pin-index system, a diameter-index system, or other approved equivalent safety system shall be used with a therapeutic gas.

— (e)(f) Resuscitation, ventilatory, and oxygenation support equipment shall be available in accordance with the needs of the patient population served. [for all patients served by the hospital.]

— (5) Medical Records:

— (a) All respiratory care services provided to a patient shall be documented and include the type of therapy, date and time of administration, effects of therapy, and any adverse reactions.

— (i) The responsible physician shall document in the patient's medical record a timely and pertinent clinical evaluation of the overall results of respiratory therapy;

— (ii) Prior to discharge, instructions shall be given to the patient or patient's guardian about pulmonary care relevant to the respiratory problem.

— (b) A written record of the prescription and diagnosis shall be maintained in respiratory care service files.

— (6) Quality Assurance:

— The respiratory care service in conjunction with the hospital's quality assurance program shall actively participate in any audits of patient care concerning pertinent problems of respiratory care.]

R432-100-[28]20. [Physical]Rehabilitation Therapy Services.

(1) [Organization:

— (a) Physical][If rehabilitation therapy services [shall]are provided by the hospital, the services [be available]may include physical therapy, speech therapy, and occupational therapy.

([b]a) [The physical]Rehabilitation therapy services shall be directed by a qualified, licensed [physical therapist]provider who shall have [administrative]clinical responsibilities for the [physical]specific therapy [department]service.

[— (c) There shall be physical therapy staff and support personnel to provide the physical therapy requested by authorized individuals for the care of patients.]

([i]b) [Staff physical therapists]All rehabilitation therapy staff shall be licensed, registered, or certified as required by the Utah Department of Commerce.

([i]c) Patient services performed by support personnel, shall be commensurate with each person's documented training and experience.

[— (iii) A physical therapy aide shall complete an organized program of on-the-job training in aspects of physical therapy services as described in his job description.]

(d) [Physical]Rehabilitation therapy services may be initiated by a member of the medical staff or by a licensed rehabilitation[physical] therapist.

(i) [The]A physician's written request for services shall include reference to the diagnosis or problems for which treatment is planned, and any contraindications.

(ii) The patient's physician shall retain responsibility for the specific medical problem or condition for which the referral was made.

[(iii) Physical](e) Rehabilitation therapy services provided to the patient shall include evaluation of the patient, establishment of goals, development of a plan of treatment, regular and frequent assessment, maintenance of treatment and progress records, and periodic assessment of the quality and appropriateness of the care provided.

[— (2) Policies and Procedures:

— (a) There shall be written policies and procedures developed and approved by the physical therapy services in conjunction with the medical staff.

— (b) They shall be reviewed annually, revised as necessary, and include the following:

— (i) methods of referral for service;

— (ii) scope of service;

— (iii) responsibilities of professional and support staff;

— (iv) professional consultation;

— (v) discharge of patients;

— (vi) priorities in the use of services;

— (vii) infection control;

— (viii) transfer of patient records when patients are transferred between facilities;

— (ix) safety;

- ~~— (x) maintenance of records and reports;~~
- ~~— (xi) an incident-reporting system;~~
- ~~— (xii) emergency procedures, e.g. fire;~~
- ~~— (xiii) clinical record use and retention.~~
- ~~(3) Equipment:~~
 - ~~— (a) Equipment shall be calibrated according to the manufacturer's directions.~~
 - ~~— (b) Equipment shall be inspected yearly and maintained in accordance with the hospital's preventive maintenance program. Inspection and maintenance shall be documented.~~
- ~~(4) Records~~
 - ~~— (a) There shall be a written plan of care for each patient receiving physical therapy appropriate to his diagnosis and condition.~~
 - ~~— (b) Records for each physical therapy patient shall include the following:~~
 - ~~— (i) medical staff orders or referral;~~
 - ~~— (ii) pertinent diagnoses or a problem list;~~
 - ~~— (iii) precautions necessitated by the patient's general medical condition;~~
 - ~~— (iv) short and long term goals;~~
 - ~~— (v) frequency of review;~~
 - ~~— (vi) an assessment of patient progress;~~
 - ~~— (vii) justification for continued care.~~
- ~~(5) Continuing Education:~~
 - ~~— (a) The physical therapy staff shall participate in any pertinent continuing education and orientation programs of the hospital.~~
 - ~~— (b) All physical therapists and physical therapy assistants shall maintain cardiopulmonary resuscitation certification.~~
- ~~(6) Quality Assurance:~~
 - ~~— The physical therapy staff shall participate in quality assurance activities of the hospital.]~~

R432-100-[29]21. Radiology Services.

- (1) [O]rganization.
 - ~~— (a)]Each hospital shall provide an organized radiology department offering services that are in accordance with the needs and size of the institution.~~
 - [~~(b)](a) Responsibility for the administrative direction of the radiology services provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator.~~
 - [~~(i) The qualifications and appointment of the director shall be approved by the medical staff.~~
 - ~~— (ii) The responsibilities and duties of the director shall be defined in writing.~~
 - ~~— (iii) These duties and responsibilities shall be approved by the medical staff.]~~
 - ([e]b) Medical direction of the department shall be provided by a member of the medical staff.
 - (i) [When]If a radiologist is not the medical director of the radiology services, the services of a radiologist shall be retained on a part-time basis.
 - (ii) [When]If a radiologist provides services on less than a full-time basis, the time commitment shall allow him to complete the necessary functions to meet the radiological needs of the patients and the medical staff.
 - ([d]c) The radiologist [shall]is responsible to:

(i) maintain a quality control program that minimizes unnecessary duplication of radiographic studies and maximizes the quality of diagnostic information available;

(ii) develop technique charts that include part, thickness, exposure factors, focal film distances and whether a grid or screen technique;

(iii) assure the availability of information regarding the purpose and yield of radiological procedures and the risks of radiation.

([e]d) At least one qualified radiologic technologist shall be on duty or available when needed. Each radiological technologist shall be licensed pursuant to Title 58, Chapter 54.

[~~(f) Job descriptions shall be consistent with the qualifications of the employee:~~

~~— (g) Student technologists shall be supervised by a qualified technologist, and shall not be solely responsible for call duty until they are in the final phase of clinical training and have the approval of the training program director.]~~

([h]e) Diagnostic radiology services shall be performed only at the request of a member of the medical staff or other persons authorized by the hospital.

([i]f) If [R]radiation [O]ncology services are provided, the following applies:

(i) [individuals]physicians and staff who provide radiation oncology services have delineated privileges;

(ii) the medical director of the radiation oncology services is a physician member of the medical staff who is qualified by education and experience in radiation oncology.

~~[(2) Education:~~

~~— (a) There shall be continuing education for technologists and other technical personnel which meets Section R156-54-10:~~

~~— (b) Each employee's participation shall be documented:~~

~~— (i) An orientation program shall be provided for each new employee which shall include instruction in safety precautions and in the management of emergency radiation hazards and accidents:~~

~~— (ii) In-service educational programs shall be held at regular and defined intervals.~~

~~(3) Policies and Procedures:~~

~~— (a) There shall be written policies and procedures concerning the scope and conduct of radiology services:~~

~~— (b) The policies shall be reviewed annually, revised as necessary, dated, and enforced by the director:~~

~~— (c) They shall include at least the following:~~

~~— (i) radiotherapy shall be supervised only by the responsible radiotherapist or radiologist practicing therapy;~~

~~— (ii) safety precautions, electrical and mechanical hazards, fires and explosions;~~

~~— (iii) guidelines for the management and scheduling of patients;~~

~~— (iv) infection control;~~

~~— (v) parenteral administration of diagnostic agents;~~

~~— (d) Non-physician personnel shall have written authority from the director to administer diagnostic agents;~~

~~— (e) Safety precautions shall include the provision of an emergency drug tray and access to oxygen, suction airways, I.V.'s, and defibrillator;~~

~~— (f) There shall be a physician available in-house prior to the administration of parenteral diagnostic agents:~~

~~(g) Radiation safety precautions shall conform to rules adopted by the Utah Department of Environmental Quality and include provision for the following:~~

~~(i) the safe use, removal, handling, and storage of radioactive elements and their disintegration products;~~

~~(ii) A quality control program designed to minimize patient, personnel and public risks and maximize the quality of therapy.~~

~~(iii) A qualified physician, medical physicist, or other qualified individual performs:~~

~~(iv) monitor performance evaluation of treatment equipment at least monthly;~~

~~(v) monitor each patient for the prescribed dose(s) distribution to an acceptable degree of accuracy and precision, and~~

~~(vi) monitor therapy machines, radiation sources, and simulators for proper working order.~~

~~(vii) guidelines for protecting personnel and patients from radiation;~~

~~(4)(2) [Medical Records.]Radiologic patient records shall be integrated with the hospital patient record.~~

~~(a) All requests for radiologic services shall contain the reasons for the examinations.[The requesting practitioner is responsible for providing this information.]~~

~~(b) Authenticated reports of these examinations shall be filed in the patient's medical record as soon as possible. Radiological film shall be retained in accordance with hospital policy.[If copies are retained by the radiology department then the record shall be stored for five years.]~~

~~(c) [When]If requested by the attending physician and [when]if the quality of the radiograph permits, the radiology department may officially enter the interpretations of the radiologic examinations performed outside of the hospital in the patient's medical record.~~

~~(d) Radiotherapy summaries shall be filed in the patient's medical record a copy may be filed in the radiotherapy department. The radiotherapy summary shall be forwarded to the referring physician. Unless otherwise justified, the medical record of the patient receiving radiotherapy for treatment or palliation of a malignancy shall reflect the histologically substantiated diagnosis.~~

~~(e) The radiology department shall determine which procedures require consent and document that consent was obtained in the patient record.~~

~~(5) Oncology services using radiation therapy shall coordinate the policy and procedures which are approved by both medical directors of the units.]~~

[R432-100-23. Inpatient Hospice:

~~(1) Definition:~~

~~Any specialized hospital or unit within a hospital may provide a hospice program to patients with a terminal prognosis who choose palliative and supportive services. The hospice program shall allow for physical, psychological, social, and spiritual care for dying persons and their families.~~

~~(2) Organization:~~

~~(a) The hospice service shall be coordinated with other services of the hospital:~~

~~(b) Responsibility for administrative direction shall be vested in an individual appointed and authorized by the administrator of the hospital:~~

~~(c) Responsibility for medical direction shall be vested in a qualified physician who is a member of the medical staff:~~

~~(d) Responsibility for nursing services shall be under the direction of a registered nurse:~~

~~(3) Policies and Procedures:~~

~~There shall be written policies and procedures approved by the medical staff, and reviewed annually, that address at least the following:~~

~~(a) An interdisciplinary team made up of at least a physician, nurse, social worker, clergyman or counselor shall develop a plan of care, based on the needs and requested services of the patient and his family. Interdisciplinary team conferences shall be documented:~~

~~(b) The plan of care shall address the provisions for physical, psychological, social, and spiritual care to be provided to the patient and family:~~

~~(c) The use of extraordinary measures to extend a patient's life shall be discussed with the patient and family and documented. The patient and family shall sign a consent form if they choose to forgo the use of extraordinary measures such as resuscitation:~~

~~(d) Volunteer or family services shall be integrated with the hospice program if requested by the patient.~~

~~(e) Counseling and bereavement services shall be provided to patients and their families as needed:~~

~~(f) There shall be provisions to assure the privacy of patients and their families including:~~

~~(i) Accommodations for family members to remain with the patient throughout the night; and~~

~~(ii) Accommodations that permit the family to remain with the dying patient and view him after death:~~

~~(g) Hospice services shall be coordinated with other hospital and community services to assure appropriate referrals and continuity of care:~~

~~(4) Records:~~

~~The content of the patient's medical record shall conform to the requirements of subsection R432-100-35 with particular attention on the following:~~

~~(a) Diagnosis and prognosis;~~

~~(b) Patient and family assessment and plan of care including the disciplines who shall provide the required services;~~

~~(c) Documentation of chronic or acute pain and their management;~~

~~(d) Documentation of counseling or bereavement services;~~

~~(e) Discharge summary.~~

~~(5) Quality Assurance:~~

~~The medical director of the hospice service shall be responsible for a review of the quality and effectiveness of the hospice service, at least annually:]~~

R432-100-[26]22. Laboratory and Pathology Services.

~~(1) [Organization:~~

~~(a)]Each hospital shall provide laboratory and pathology services that are in accordance with the needs and size of the institution.~~

~~(b)(a) Responsibility for the administrative direction of the laboratory and pathology services provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator.~~

~~(i) The qualifications and appointment of the director shall be approved by the medical staff.~~

~~(ii) The responsibilities and duties of the director shall be defined in writing and shall be approved by the medical staff.~~

~~(c)(b) Responsibility for the medical direction of the laboratory services shall be vested in a member of the medical staff who shall be appointed or elected by the medical staff.~~

~~(c) Laboratory and pathology services shall comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.~~

~~[The services of a pathologist shall be available on a full-time, part-time or consultative basis.~~

~~(i) When the pathologist is used on less than a full-time basis, the services shall be provided as often as required but not less than monthly.~~

~~(ii) The time commitment shall allow the pathologist to perform all the necessary functions to meet the pathology needs of the patients and medical staff.~~

~~(e) There shall be qualified laboratory and supportive technical staff to perform, promptly and proficiently, the tests required of the pathology and medical laboratory services.~~

~~(i) At least one qualified medical technologist shall be on duty or available at all times. A qualified medical technologist shall have:~~

~~(A) a bachelor's degree in medical technology from an accredited college or university; or~~

~~(B) a bachelor's degree in one of the biological sciences and at least one year of full-time laboratory experience or training in the specialty in which the individual performs tests; or~~

~~(C) a satisfactory grade in a proficiency examination approved by the Secretary of Health and Human Services.~~

~~(ii) Laboratory staff shall meet all applicable professional licensure requirements.~~

~~(iii) Technologists and other technical personnel shall have the opportunity to participate in continuing education programs. Each employee's participation shall be documented.~~

~~(A) In-service education programs shall be held at defined intervals that meet the needs of the technical staff;~~

~~(B) Continuing education programs shall be based on the review and evaluation of the quality and safety of laboratory services;~~

~~(C) An orientation program shall be provided for each new employee.~~

~~(2) Facilities:~~

~~Space, equipment, and supplies shall be available to perform the required volume of work accurately, efficiently, timely, and safely:~~

~~(a) The ventilation system shall be capable of removing toxic and noxious fumes.~~

~~(b) There shall be bench space.~~

~~(c) There shall be properly located and grounded electrical outlets which stabilize voltage.~~

~~(d) In the event of a power failure, the emergency power supply shall ensure staff are able to perform essential laboratory services as well as maintain any essential refrigerating or heating functions.~~

~~(e) Records shall be maintained for each piece of equipment showing the date of inspection, validations or performance evaluations, and any corrective actions.~~

~~(f) Temperatures shall be recorded daily for all temperature-controlled spaces.~~

~~(g) There shall be a communication system between the laboratory and other hospital areas.~~

~~(h) Voltage levels at electrical sources to which automated equipment is connected are monitored to identify power surges, fluctuations, or loss of voltage.~~

~~(i) Special precautions, including compliance with pertinent requirements of infection control to avoid unnecessary physical, chemical, and biological hazards in the pathology and clinical laboratory services.~~

~~(3) Policies and Procedures:~~

~~(a) There shall be written policies and procedures concerning the scope and conduct of laboratory services.~~

~~(b) The policies shall be reviewed annually, revised as necessary, dated to indicate the time of the last review, and enforced by the director.~~

~~(c) They shall include the following:~~

~~(i) the ordering of tests;~~

~~(ii) identification, storage, and preservation of specimens;~~

~~(iii) assuring accurate and timely reporting of test results;~~

~~(iv) routine or standing orders;~~

~~(v) quality control and proficiency testing, and reporting of test results;~~

~~(vi) personnel;~~

~~(vii) continuing education;~~

~~(viii) infection control;~~

~~(ix) methods used to prepare patients and to collect specimens.~~

~~(d) Authenticated dated reports of all examinations performed by the pathology or laboratory shall be made a part of the patient's medical record. If the patient is not an inpatient, the hospital shall have a system for assuring that the information is easily available to the patient's practitioner.~~

~~(i) When tests are performed in a reference laboratory, the name of the laboratory performing the test shall be included on the report.~~

~~(ii) Tests can be performed only by a laboratory holding a valid certification under the Clinical Laboratory Improvement Amendments of 1988, (CLIA);~~

~~(e) Reports of all clinical laboratory tests and examinations shall be readily available to the individual ordering the tests;~~

~~(f) Results of all clinical laboratory tests shall be retained for two years in a readily retrievable manner.~~

~~(4) Quality Assurance:~~

~~(a) The laboratory shall have a documented quality control program for each section of the pathology and laboratory services.~~

~~(b) The program shall include at least:~~

~~(i) preventive maintenance, periodic inspection and testing for proper operation of equipment and instruments, validation of methods, evaluation of reagents and volumetric equipment surveillance of results, corrective action;~~

~~(ii) adequacy of facilities, equipment, instruments, and methods for performance of the procedures;~~

~~(iii) identification, storage, and preparation of reagents;~~

~~(iv) verification and assessment of accuracy and precision of all types of analysis. The laboratory shall have a proficiency testing program that conforms to the requirements of the Utah Department of Health Laboratory Proficiency Testing Criteria and the Clinical Laboratory Improvement Amendments of 1988, (CLIA);~~

~~(v) personnel performance appraisal.~~
~~(5) Pathology Services.~~
~~(a) Specimens removed during a surgical procedure shall be sent to the pathologist for evaluation.~~
~~(i) The specimens shall be labeled, packaged, and identified by patient and source.~~
~~(ii) The specimen shall be accompanied by clinical information including the preoperative and postoperative diagnoses when known.~~
~~(iii) Every gross specimen sent to the laboratory shall be examined by a pathologist.~~
~~(b) The medical staff in consultation with the pathologist shall decide the exceptions to sending specimens removed during a surgical procedure to the laboratory. The limited categories of specimens that may be exempted include:~~
~~(i) specimens that do not permit productive examination;~~
~~(ii) therapeutic radioactive sources;~~
~~(iii) traumatically injured and amputated members;~~
~~(iv) foreign bodies that are given to law enforcement officials;~~
~~(v) specimens that rarely show pathological change and where removal is highly visible post-operatively;~~
~~(vi) normal placentas;~~
~~(vii) teeth.~~
~~(c) Microscopic slides shall be identified, properly indexed and stored to maintain their diagnostic value.~~
~~(d) Paraffin blocks shall be identified, properly indexed, stored in a cool place, and protected against damage.~~
~~(e) All tissue sections shall be readily available for reference and consultation.~~
~~(f) Retention requirements:~~
~~(i) Gross tissue specimens shall be retained in fixative for at least seven days after all required microscopic sections are examined and the reports are reviewed and signed;~~
~~(ii) Microscopic slides, paraffin blocks, bone marrow aspirates, and needle biopsy specimens shall be stored for two years;~~
~~(iii) All abnormal slides shall be stored permanently.~~
~~(g) All laboratory tests for individuals on inpatient status shall be ordered by a physician or other licensed practitioner.~~
~~(h) Laboratory tests for all other individuals shall be according to hospital policy, and comply with the provisions of Section R432-100-24.]~~

R432-100-~~25~~23. Blood [Bank and] Services.

(1) ~~[Description of Services:]~~Hospital blood services are defined as follows:

(a) A "donor center" means a facility that procures, prepares, processes, stores and transports blood and blood components.

(b) A "transfusion service" means a facility that ~~prepares components, but also~~ stores, determines compatibility, transfuses blood and blood components, and monitors transfused patients for any ill effect.

(c) A "blood bank" means a facility that combines the functions of a donor center and transfusion service within the same facility.

(2) [Requirements:

~~(a)]~~The blood service shall establish and maintain an appropriate blood inventory in the hospital at all times, have immediate access to community blood services or other institutions,

or have an up-to-date list of donors, equipment and trained personnel to draw and process blood.

~~(a) Blood or blood components [are] must be collected, stored, and handled in such manner that they retain potency and safety.[- and they]~~

~~(b) Blood or blood components [are] must be properly processed, tested, and labeled.~~

~~[(b)](3) If the hospital operates a donor center, transfusion service or a blood bank [and is] the donor center, transfusion service, or blood bank must be accredited.~~

~~(a) Hospital blood banks and donor centers must be accredited by the Food and Drug Administration (FDA).~~

~~(b) Hospital transfusion centers must be accredited by either the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or the American Association of Blood Banks (AABB), [by the American Association of Blood Banks (AABB); College of American Pathologists (CAP), the Food and Drug Administration (FDA), or The Joint Commission on Accreditation of Hospitals (JCAHO), the requirements of the following sections are met:]~~

~~[(c)](4) Results of the accrediting organization survey must be available for Department review. [Facilities not accredited by either the AABB, CAP, FDA, or JCAH shall meet the requirements of R432-100-25(3) through (6):~~

~~(3) Organization:~~

~~(a) The hospital shall maintain such blood services as determined to be necessary by the medical staff and administration.~~

~~(b) These services shall be under the control and direction of a pathologist or other physician knowledgeable in immunohematology, hemotherapy, and blood banking.~~

~~(c) The blood bank technical staff shall have training and experience to be technically competent in the services performed.~~

~~(d) Supervision of the technical services shall be by a registered medical technologist.~~

~~(4) Facility and Equipment:~~

~~(a) The hospital shall provide sufficient space, storage facilities, and equipment in order not to compromise the quality, accuracy and safety of the services.~~

~~(b) This shall include:~~

~~(i) A refrigerator that is large enough to meet the needs of the facility that is used exclusively for blood storage. The temperature shall be continuously recorded and maintained between 1 degree C and 6 degrees C.~~

~~(ii) There shall be an audible and visual alarm outside on the refrigerator, adjusted to be triggered below 1 degree C and above 6 degrees C.~~

~~(iii) The alarm shall be supported by an emergency generator to ensure that it functions even when the primary power to the refrigerator is cut off.~~

~~(c) Other storage facilities shall be provided to safely store other blood products:~~

~~(d) Stored blood is inspected at time of use for evidence of hemolysis and for possible bacterial contamination:~~

~~(5) Quality Assurance:~~

~~(a) Written reports, reviewed monthly by the director or the supervisor of the blood services, of the blood services activities shall be maintained for no less than five years.~~

~~(b) These shall include:~~

~~(i) reactivity of reagents;~~

- ~~— (ii) instrument checks;~~
- ~~— (iii) temperature checks;~~
- ~~— (iv) results and methods of all patient or donor sample testings;~~
- ~~— (v) date of testing and the person performing the test;~~
- ~~— (vi) signed consents and eligibility assessments.~~
- ~~— (6) Policies and Procedures:~~
 - ~~— (a) Written policies and procedures shall be readily available;~~
 - ~~— (b) These shall conform to the latest standards of the AABB;~~
 - ~~— (c) These policies and procedures shall be reviewed annually by the director of the blood bank;~~
 - ~~— (d) New policies and procedures may be developed as required by the blood bank director in conjunction with the blood bank and medical staff;~~
 - ~~— (e) Blood transfusion policies and procedures relate to the following:~~
 - ~~— (i) release of unused blood to the original organization or another organization;~~
 - ~~— (ii) the reporting and investigation of adverse reactions;~~
 - ~~— (iii) the procedure for the return to the blood bank of unused blood that was previously issued for transfusion purposes;~~
 - ~~— (iv) testing for infectious agents.]~~

R432-100-~~[27]~~24. Pharmacy Services.

- (1) ~~{Organization:~~
 - ~~— (a)]The pharmacy of a hospital currently accredited and conforming to the standards of The Joint Commission on Accreditation of Health Care Organizations (JCAHO) shall be determined to be in compliance with these rules.~~
 - ~~[(b)](a) If a hospital is not accredited by JCAHO, then the pharmacy of such hospital shall comply with rules in this section.~~
 - ~~[(c)](b) The pharmacy department and service shall be directed by a pharmacist licensed by the Utah Department of Commerce.~~
 - (i) Competent personnel shall be employed in keeping with the size and activity of the department and service. If the hospital uses only a drug room and the size of the hospital does not warrant a full-time pharmacist, a consultant pharmacist may be employed.[:]
 - (ii) The pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy.
 - (iii) Provision shall be made for access to emergency pharmaceutical services.
 - (iv) The pharmacist shall be trained in the specific functions and scope of the hospital pharmacy.
 - ~~— (d) The administrator shall appoint a Pharmacy and Therapeutics Committee composed of at least the pharmacist, a physician, and a nurse. The Committee shall:~~
 - ~~— (i) Advise the medical staff and the hospital pharmacist on pharmacy matters and develop a list of drugs accepted for use in the hospital;~~
 - ~~— (ii) Make recommendations concerning drugs provided to and stocked in service areas;~~
 - ~~— (iii) Meet at least quarterly.]~~
- (2) ~~[Facility:~~
 - ~~— (a)]Facilities shall be provided for the safe storage, preparation, safeguarding, and dispensing of drugs.~~
 - ~~[(f)](a) All floor-stocks shall be kept in secure areas in the [nursing]patient care units, [and shall be routinely checked by the pharmacist;]~~

~~[(f)](b) Double-locked storage shall be provided for controlled substances. Electronically controlled storage of narcotics may be permitted if automated dispensing technology is utilized by the hospital.~~

~~(c) Medications stored at room temperatures shall be maintained within 59 and 80 degrees F.~~

~~(d) Refrigerated medications shall be maintained within 36 and 46 degrees F.~~

~~[(b)](e) A current toxicology reference, and other references as needed for effective pharmacy operation and professional information shall be available.~~

(3) ~~[Records:~~

~~— (a)]Records shall be kept of the transactions of the pharmacy and medication storage unit and coordinated with other hospital records.~~

~~[(b)](a) There shall be a recorded and signed floor-stock controlled substance count once per shift.~~

~~(b) If automated dispensing technology is utilized by the hospital, a system for accounting of controlled substances dispensed by the automated dispensing system shall be implemented.~~

~~(c) The record shall list the name of the patient receiving the controlled substance, the date, type of substance, dosage, and signature of the person administering the substance.~~

(4) ~~[Policies:~~

~~—]Written policies and procedures that pertain to the intra-hospital drug distribution system and the safe administration of drugs shall be developed by the director of the pharmaceutical department or service in concert with the medical staff, [and others.]~~

~~(a) Drugs that are provided to floor units shall be administered in accordance with [approved]hospital policies and procedures. [of the Pharmacy and Therapeutics Committee:]~~

~~(b) The medical staff in conjunction with the pharmacist [Pharmacy and Therapeutic Committee] shall establish standard stop orders for all medications not specifically prescribed as to time or number of doses.~~

~~(c) The pharmacist shall have full responsibility for dispensing of all drugs.~~

~~(d) There shall be a policy stating who may have access to the pharmacy or drug room when the pharmacist is not available.~~

~~[(c) The policy shall also require that records be kept of all transactions.]~~

~~(e) There shall be a documentation system for the accounting and replacement of drugs, including narcotics, to the emergency department.~~

~~(f) Medication errors and adverse drug reactions shall be reported immediately in accordance with written procedures [which shall include]including notification of the practitioner who ordered the drug.~~

R432-100-~~[34]~~25. Social Services.

(1) ~~[Organization:~~

~~— (a)]In a hospital with an organized social [work]services department [or services], a qualified social worker shall direct the provision of social work services. [This individual shall be responsible to the administration of the institution. When]If a hospital does not have a full or part-time qualified social worker, the administrator shall designate an employee to coordinate and assure the provision of social work services. The social worker, or~~

designee[employee] shall be knowledgeable about community agencies, institutions, and other resources.

~~[(b) For social work services present and available in the hospital, there shall be:~~

~~— (i) policies and procedures relating to the staff and functions of the service;~~

~~— (ii) written job descriptions for each employee performing social work services;~~

~~— (iii) arrangements for obtaining consultation from a qualified social worker when a qualified social worker is not employed on at least a part-time basis;~~

~~— (iv) staff for patient care planning.]~~

(2) In a hospital without an organized social services department, the hospital shall obtain consultation from a qualified social worker to provide social work services.

~~[(c)](3) The staff shall be oriented to help the patient make the best use of available inpatient, outpatient, extended care, [and] home health, and hospice services.~~

~~[(d)](4) Social Services shall be integrated with services of other departments and services of the hospital.~~

~~[(2) Records:~~

~~— (a) Records shall be kept and made available only to the professional personnel concerned;~~

~~— (b) Records shall include:~~

~~— (i) medico-social or psycho-social study of referred inpatients and outpatients;~~

~~— (ii) financial status of the patient;~~

~~— (iii) follow-up of discharged patients;~~

~~— (iv) social therapy and rehabilitation of patients;~~

~~— (v) environmental investigations for attending physicians;~~

~~— (vi) cooperative activities with community agencies;~~

~~— (vii) an incident-reporting system.~~

~~(3) Quality Assurance:~~

~~Social Services shall participate in quality assurance activities of the hospital.]~~

R432-100-[20]26. Psychiatric Services.

~~(1) [Organization:~~

~~— (a)]If provided by the hospital, psychiatric services shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of service provided.~~

~~[(b)]a) If the hospital does not provide psychiatric services, there shall be a procedure to transfer patients to a facility that can provide the necessary psychiatric services.~~

~~[(c)]b) Responsibility for the administrative direction of psychiatric services provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator. [The qualifications and appointment of the director shall be approved by the medical staff. The responsibilities and duties of the director shall be designated in writing and shall be approved by the medical staff.]~~

~~[(d)]c) Responsibility for the medical direction of psychiatric services provided by the hospital shall be defined in writing and vested in [and under the supervision of] a qualified physician who is a member of the medical staff.~~

(d) Psychiatric services shall comply with the following sections of R432-101, Specialty Hospitals, Psychiatric:

(i) R432-101-13 Patient Security

(ii) R432-101-14 Special Treatment Procedures;

(iii) R432-101-17 Admission and Discharge;

(iv) R432-101-20 Inpatient Services;

(v) R432-101-21 Adolescent or Child Treatment Programs;

(vi) R432-101-22 Residential Treatment Services;

(vii) R432-101-23 Physical Restraints, Seclusion, and Behavior Management;

(viii) R432-101-24 Involuntary Medication Administration; and

(ix) R432-101-34 Partial Hospitalization Services.

(e) If outreach services are ordered by a physician as part of the plan of care or hospital discharge plan, the outreach services may be provided in a clinic, physician's office, or the patient's home.

~~[(2) Policies and Procedures:~~

~~— (a) There shall be written policies and procedures specifying the scope and conduct of psychiatric services.~~

~~— (b) They shall be approved by the medical staff, reviewed annually, revised as necessary, and relate to the following:~~

~~— (i) Use of restraining devices on a patient;~~

~~— (ii) Seclusion of a patient;~~

~~— (iii) Use of drugs;~~

~~— (iv) Pertinent safety precautions;~~

~~— (v) Assignment of personnel and job descriptions;~~

~~— (vi) Continuing education requirements for all personnel;~~

~~— (vii) An incident-reporting system.~~

~~(3) Medical Records:~~

~~Medical records required for psychiatric patients shall conform to the Medical Records section R432-100-35. The history and physical for psychiatric patients shall include a mental-status examination.~~

~~(4) Quality Assurance:~~

~~The director of psychiatric services is responsible for assuring that a review and evaluation of the quality and appropriateness of psychiatric services are performed at least quarterly.~~

~~(5) Nursing Service:~~

~~Nursing services required for psychiatric patients shall conform to the Nursing Service R432-100-6.~~

~~(6) If outreach services are ordered by a physician as part of a plan of care or hospital discharge plan, then the outreach services may be provided in a clinic, physician office, or the patient's home.~~

~~(7) If offered, the residential treatment service shall be organized as a specialty program under the direction of the medical director or his designee.~~

~~(a) "Residential Treatment" means a 24-hour group living environment for four or more individuals unrelated to the licensee. Individuals are assisted in acquiring the social and behavioral skills necessary for living independently.~~

~~(b) Residential treatment services shall meet the requirements identified in R432-101-25.]~~

R432-100-[22]27. Substance Abuse[~~Treatment-~~]Rehabilitation Services.

(1) [Any specialized hospital or unit within a] A hospital may provide inpatient or outpatient substance abuse rehabilitation services. [Such services shall conform to the rules of the Utah Division of Substance Abuse R544-1,4,5,7 and 8 and the requirements of this rule:

(1) Organization:

— (a) Any specialized hospital or unit within a hospital that provides substance abuse rehabilitation services shall be staffed to meet the needs of the patients or clients, and coordinated with other hospital services.

(b) Responsibility for administrative direction shall be vested in an individual appointed and authorized by the administrator of the hospital.

(c) Responsibility for medical direction shall be defined in writing and vested in a qualified physician who is a member of the medical staff.

(d) Responsibility for nursing services shall be under the direction of a full-time registered nurse.

(e) Responsibility for substance abuse counseling shall be under the direction of a licensed mental health therapist.

(f) A certified licensed substance abuse counselor shall may serve as the primary therapist under the direction of an individual licensed under the Mental Health Practice Act.

(g) An interdisciplinary team including the physician, registered nurse, licensed mental health therapist, and substance abuse counselor shall be responsible for program and treatment services. The patient or client may be included as a member of the interdisciplinary team.

(h) Policies and Procedures:

— There shall be written policies and procedures approved by the medical staff and reviewed annually that address at least the following:

- (a) Staff and responsibilities;
- (b) Program services;
- (c) Patient or client assessment;
- (d) Treatment and discharge;
- (e) Special treatment needs of patients by reason of age, gender, sexual orientation or ethnic origin are evaluated.

(i) Program Services:

— Substance abuse rehabilitation services shall include at least the following:

(a) Detoxification care shall be available for the systematic reduction or elimination of a toxic agent in the body by use of rest, fluids, medication, counseling, or nursing care.

(b) Counseling shall be available in at least one of the following areas: individual, group, or family counseling. In addition, there shall be provisions for educational, employment, or other counseling as needed.

(c) Treatment services shall be coordinated with other hospital and community services to assure continuity of care through discharge planning and aftercare referrals. Counselors may refer patients or clients to public or private agencies for substance abuse rehabilitation, and employment and educational counseling.

(d) A comprehensive assessment shall be documented that includes at least a physical examination, a psychiatric and psychosocial assessment, and a social assessment.

(e) Physical Examination:

— (f) Psychiatric and psychological assessment:

— (g) Social Assessment:

(4) Records:

— (a) The content of the medical record shall conform to the requirements of section R432-100-35 of these rules and in addition shall include the following:

— (i) Patient or client assessment. The assessment shall include a medical, psycho-social, substance abuse, and treatment history.

— (ii) Individualized treatment plan. A treatment plan based on the patient assessment including goals and methods of treatment. The plan shall be reviewed and updated every 90 days for outpatient and every 30 days for residential patients.

— (iii) Progress notes including description and date of service, and summary of client progress signed by the therapist or service provider.

— (iv) Signed discharge summary.

— (v) Aftercare follow-up including final evaluation of treatment and goals attained.

(b) The confidentiality of medical records of substance abuse patients and clients shall be maintained according to the federal guidelines in 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(5) Quality Assurance:

— The medical director of the substance abuse treatment service shall be responsible to review, at least annually, the quality and effectiveness of the services provided.

(6) Residential treatment services may be provided under the direction of the medical director or his designee. Residential treatment services shall comply with R432-101-25.

R432-100-18. Outpatient Services.

(1) Organization:

— Outpatient care service provided by the hospital shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of services provided.

(a) Outpatient care shall meet the same standards of quality care that apply to inpatient care.

(b) Outpatient care includes hospital owned outpatient services, and hospital satellite services.

— (b) Responsibility for the administrative direction of outpatient services provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator.

(i) The qualifications and appointment of the director shall be approved by the medical staff.

(ii) The responsibilities and duties of the director shall be defined in writing. These duties and responsibilities shall be approved by the medical staff.

(c) Responsibility for medical direction shall be defined in writing and vested in one or more members of the medical staff. The medical staff shall provide and define in writing the medical coverage for outpatient services.

(d) Registered nurses shall supervise the provision of outpatient nursing care. Nursing personnel shall be available to provide the nursing care.

(e) The duties and responsibilities of other staff disciplines and their relationship to physicians and nurses shall be defined in writing.

(2) Personnel:

— All personnel shall be prepared for the responsibilities in the provision of outpatient care through education and training programs.

(a) A planned, formal educational program shall be established. All personnel who provide outpatient care shall participate in relevant programs and activities. The extent of participation shall be documented and shall be realistically related

to the size of the staff and to the scope and complexity of outpatient services provided:

~~—(b) CPR training shall be conducted annually for professional personnel who work in the outpatient care setting.~~

~~—(3) Policies and Procedures.~~

~~—There shall be written policies and procedures specifying the scope and conduct of patient care provided in the outpatient care setting.~~

~~—(a) The policies and procedures shall be approved by the medical staff, the nursing staff, the hospital administration and other pertinent departments.~~

~~—(b) The policies shall be reviewed annually, revised as necessary, dated to indicate the time of the last review, and enforced through the Quality Assurance Committee. The policies shall include the following:~~

~~—(i) The patient appointment system;~~

~~—(ii) The method used to inform a patient of the responsibility for this care;~~

~~—(iii) The outpatient medical record;~~

~~—(iv) Referred outpatients;~~

~~—(v) The scope of treatment allowed in specific patient care areas, including general and specific elective procedures that may not be performed by medical staff members;~~

~~—(vi) The limits on the use of anesthetic agents;~~

~~—(vii) Who, other than members of the medical staff, may perform specified procedures, under what circumstances, and under what degree of supervision;~~

~~—(viii) Provision of care to unemancipated minors not accompanied by a parent or guardian;~~

~~—(ix) Location, storage, and procurement of medications, supplies, and equipment;~~

~~—(x) The dispensing of medications;~~

~~—(xi) Infection control;~~

~~—(xii) Pertinent safety practices;~~

~~—(xiii) Any required reporting of communicable diseases;~~

~~—(xiv) The role of the outpatient service in the hospital disaster plans;~~

~~—(xv) Standing orders;~~

~~—(xvi) Handling and safekeeping of patients' valuables.~~

~~—(4) Facilities and Equipment.~~

~~The outpatient service shall be designed and equipped to facilitate the safe and effective care of patients.~~

~~—(a) Outpatient care areas shall be accessible to patients.~~

~~—(b) Radiology, pathology, and laboratory services shall be available as required.~~

~~—(c) There shall be a nurse call system.~~

~~—(d) Emergency carts and emergency drug storage areas shall be checked at least daily or after each use to assure that all items are immediately available in usable condition. This may be met by a system designed to assure the continued integrity of the contents between periods of use.~~

~~—(e) Refrigerated storage for biologicals and other supplies shall be available.~~

~~—(5) Medical Records.~~

~~—(a) Complete and accurate medical records shall be maintained for every patient and shall be available to the other professional services of the hospital. The outpatient medical record shall be integrated with the patient's overall hospital record or record identification system.~~

~~—(b) The hospital shall maintain accurate records on those patients who are referred outpatients. These records shall include:~~

~~—(i) Patient identification;~~

~~—(ii) Prescriptions or orders of the medical staff;~~

~~—(iii) Referral information;~~

~~—(iv) Reports of procedures, tests, and results.~~

~~—(6) Quality Assurance.~~

~~The medical director of the outpatient care service is responsible for assuring that a review and evaluation of the quality and appropriateness of outpatient care services are performed at least twice yearly.~~

~~—(a) The review shall include the use of the medical record and pre-established criteria.~~

~~—(b) The quality assurance program shall include provision for:~~

~~—(i) Coordination of scheduling and staffing plans;~~

~~—(ii) Availability of x-rays, laboratory tests, and EKGs;~~

~~—(iii) Examination of surgical specimens by a pathologist;~~

~~—(iv) When appropriate, provision of a copy of the record or summary to the practitioner responsible for follow-up care;~~

~~—(v) Maintenance of patient drug profiles;~~

~~—(vi) Medical staff review of clinical use of antibiotics;~~

~~—(vii) Medical staff review of blood utilization;~~

~~—(viii) A means of communicating in the language of the predominant groups served.]~~

R432-100-29. Respite Services.

(1) A remote-rural general acute hospital with a federal swing bed designation may provide respite services to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for an individual.

(a) The hospital may provide respite care services and need comply only with the requirements of this section.

(b) If, however, the hospital provides respite care to an individual for longer than 14 consecutive days, the hospital must admit the individual as an inpatient subject to the requirements of this rule applicable to non-respite inpatient admissions.

(2) Respite services may be provided at an hourly rate or daily rate.

(3) The hospital shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(4) The hospital shall document the individual's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(5) The hospital must complete the following:

(a) A Level 1 Pre-admission Screening upon the person's admission for respite services.

(b) A service agreement which will serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(6) The hospital shall have written policies and procedures available to staff regarding the respite care patients which include:

(a) Medication administration;

(b) Notification of a responsible party in the case of an emergency;

(c) Service agreement and admission criteria;

(d) Behavior management interventions;

(e) Philosophy of respite services;

- (f) Post-service summary;
- (g) Training and in-service requirement for employees; and
- (h) Handling patient funds.
- (7) The facility shall provide a copy of the Resident Rights to the patient upon admission.
- (8) The facility shall maintain a record for each patient who receives respite services which includes:
 - (a) Service agreement;
 - (b) Demographic information and patient identification data;
 - (c) Nursing notes;
 - (d) Physician treatment orders;
 - (e) Records made by staff regarding daily care of the patient in service;
 - (f) Accident and injury reports;
 - (g) Post-service summary.
- (9) If a patient has an advanced directive the facility shall file a copy of the directive in the record and inform staff.
- (10) Retention and storage of records shall comply with R432-100-33.
- (11) The hospital shall provide for confidentiality and release of information in accordance with R432-100-33.

R432-100-30. Pet Therapy.

- (1) Household pets; such as dogs, cats, birds, fish, and hamsters may be permitted according to hospital policy.
 - (a) Pets must be clean and disease free.
 - (b) The immediate environment of the pets must be clean.
 - (c) Small pets shall be kept in appropriate enclosures.
 - (d) Pets that are not confined shall be kept under leash control, or voice control.
 - (e) Pets that are kept at the hospital, or are frequent visitors shall have current vaccinations, including rabies, as recommended by a licensed veterinarian.
 - (f) Hospitals with birds shall have procedures in place which protect patients, staff, and visitors from psittacosis.
- (2) Hospitals that permit pets to remain overnight shall have policies and procedures for the care, housing and feeding of such pets; and for the proper storage of pet food and supplies.
- (3) Pets shall not be permitted in any area where their presence would create a significant health or safety hazard or nuisance to others.
- (4) Pets shall not be permitted in food preparation and storage areas.
- (5) Persons caring for pets shall not have patient care or food handling responsibilities.

R432-100-[33]31. Dietary Service.

- (1) [Organization:
 - ~~(a)~~ There shall be an organized dietary department under the supervision of a ~~qualified~~ certified dietitian or a qualified individual who, by education or specialized training and experience, is knowledgeable in food service management. If the latter is head of the department, there must be a registered dietitian on a full-time, regular part-time, or consulting basis.
 - (b)a Responsibility for the direction of the dietary service shall be vested in a person whose qualifications, authority, responsibilities and duties are defined or approved by the administrator. The director shall have the administrative responsibility for the dietary service.

~~(c)b~~ ~~When~~ If the services of a ~~qualified~~ certified dietitian are used on less than a full-time basis, the time commitment shall permit performance of all necessary functions to meet the dietary needs of the patients.

~~(d)c~~ There shall be food service personnel to perform all necessary functions.

~~(e)~~ There shall be written job descriptions for all dietary employees. Work assignments and duty schedules shall be available.]

~~(f)2~~ ~~When~~ If dietetic services are provided by an outside ~~food management company~~ provider, the ~~company~~ outside provider shall comply with the standards of this section. ~~at applicable requirements of these rules.~~

~~(2) Facilities and Equipment:~~

~~(a) Space and equipment shall be provided for the dietetic department to store food separately from non-food supplies, to prepare and distribute food, and to clean and sanitize utensils and dishes apart from food preparation areas. When storage facilities are limited, paper products may be stored with food supplies.~~

~~(b) Food is protected from contamination and spoilage;~~

~~(c) Foods are stored at proper temperatures, utilizing thermometers and maintaining temperature records;~~

~~(d) Lighting, ventilation, and humidity are controlled to prevent the condensation of moisture and growth of molds;~~

~~(e) Methods to prevent contamination are used for making, storing and dispensing ice;]~~

~~(3) [Food Preparation And Service:~~

~~(a)~~ A current diet manual approved by the dietary department and the medical staff shall be available to dietary, medical, and nursing personnel.

~~(b)~~ The food and nutritional needs of patients shall be met in accordance with the Current Dietary Allowances of the Food and Nutrition Board of the National Research Council and in accordance with physicians' orders.]

(a) The food and nutritional needs of patients shall be met in accordance with the physician's orders.

~~(c)b~~ Regular menus and modifications for basic therapeutic diets shall be written at least one week in advance and posted in the kitchen.

~~(+)(c)~~ The menus shall provide for a variety of foods served in adequate amounts at each meal.

~~(ii)~~ Records of menus served shall be kept on file for six months:]

(d) At least three meals shall be served daily with not more than a 14-hour span between the evening meal and breakfast. If a substantial evening snack is offered, a 16-hour time span is permitted.

(e) A source of non-neutral exchanged water shall be provided for use in preparation of no sodium meals, snacks, and beverages.

(4) [Maintenance of Sanitary Conditions:

~~(a)~~ The dietary department shall comply with the Utah Department of Health Food Service Sanitation ~~Regulations~~ Rule R392-100.

(b)a The dietary facilities and equipment shall be in compliance with federal, state, and local sanitation and safety laws and rules.

~~(c)b~~ Traffic of unauthorized individuals through food preparation areas ~~is~~ shall be controlled.

~~(5) Policies and Procedures:~~

— (a) There shall be written policies and procedures concerning the scope and conduct of dietetic services, including food procurement, preparation, and nutritional care.

— (b) The policies and procedures shall be reviewed annually, revised as necessary, dated to indicate the time of the last review, and enforced by the director.

— (c) The policies and procedures shall include the following:

— (i) The responsibilities and authority of the director or dietitian who heads the dietetic department;

— (ii) Food purchasing, storage, inventory, preparation, and service including procedures for emergency or extraordinary circumstances;

— (iii) Diet orders. The orders shall be recorded in the patient's medical record by an authorized individual before the diet is served to the patient;

— (iv) The proper use of, and adherence to, standards for nutritional care as specified in a current diet manual or handbook;

— (v) Nutritional assessment, counseling, and diet instruction;

— (vi) Menus;

— (vii) Alterations in diets or diet schedules;

— (viii) Provision of food service to persons not receiving the regular meal service and ancillary dietetic services;

— (ix) An identification system for patient trays and methods to assure that each patient receives the appropriate diet as ordered;

— (x) Personal hygiene and health of dietetic personnel;

— (xi) Infection control measures to minimize the possibility of contamination and transfer of infection;

— (xii) Sanitation procedures for cleaning and maintaining equipment and work areas, and washing and storing utensils and dishes;

— (xiii) Orientation, in-service, and continuing education program for all dietary personnel.]

[4]5 Written reports of inspections by state or local health departments shall be on file at the facility and available for Department review.

[5]6 [Dietary Orders:

— (a)]The dietitian or authorized designee is responsible for documenting nutritional information in the patient's medical record.

[7]7 Diets shall be ordered by a member of the medical staff and transmitted in writing to the dietary department.

R432-100-32. Telemedicine Services.

If a hospital participates in telemedicine, it shall develop and implement policies governing the practice of telemedicine in accordance with the scope and practice of the hospital.

(1) The policies shall address security, access and retention of telemetric data.

(2) The policies shall define the privileging of physicians and allied health professionals who participate in telemedicine.

R432-100-[35]33. Medical Records.

(1) [Organization:

— (a) There shall be a medical records service or department.

— (b) Responsibility for the direction of the medical records department shall be vested in a person whose qualifications, authority, responsibilities and duties are defined or approved by the administrator.

— (i) A Registered Records Administrator (RRA) or an Accredited Records Technician (ART) shall be employed at least on a part-time basis.

— (ii) When employment of an ART or RRA is impossible, the hospital shall secure the consultative assistance of a RRA or ART.

— (c) The consultant shall visit at least quarterly.

— (d) The consultant shall give written reports of the finalized recommendations to the chief executive officer.

— (e) The director shall have administrative responsibility for the medical records department.]The hospital shall establish a medical records department or service that is responsible for the administration, custody and maintenance of medical records.

(a) The administrative direction of the department shall be established by the hospital administrator and correspond to the organizational structure and policies of the hospital.

(b) The medical records department shall retain the technical services of either a Registered Records Administrator (RRA) or an Accredited Records Technician (ART) through employment or consultation. If retained by consultation, visits shall be at least quarterly and documented through written reports to the hospital administrator.

(2) [Facilities:

— (a) There shall be space and equipment to enable medical records personnel to function effectively.

— (b) Provision shall be made for the filing, safe storage and accessibility of medical records.

— (i) The record and its contents shall be safeguarded from loss, defacement, tampering and from use by unauthorized individuals.

— (c) Equipment for reviewing the records shall be made available for use by the medical staff.]The medical records department shall provide secure storage, controlled access, prompt retrieval, and equipment and facilities to review medical records.

(a) Medical records shall be available for use or review by members of the medical and professional staff; authorized hospital personnel and agents; persons authorized by the patient through a consent form; and Department representatives to determine compliance with licensing rules.

(b) Medical records may be stored in multiple locations providing the record is able to be retrieved or accessed in a reasonable time period.

(c) If computer terminals are utilized for patient charting, the hospital shall have policies governing access and identification codes, security, and information retention.

(d) The hospital medical record shall be indexed according to diagnosis, procedure, demographic information and physician or licensed health practitioner. The indexes shall be current within six months following discharge of the patient.

(e) Original medical records are the property of the hospital and shall not be removed from the control of the hospital or the hospital's agent as defined by policy except by court order or subpoena.

(f) Medical records for persons who have received or requested admission to alcohol or drug programs shall comply with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

[(3) Employees:

— (a) There shall be a written job description for each employee.

~~— (b) Each employee shall participate in a continuing education program.]~~

~~[(4) Medical Record Availability:~~

~~— A medical record shall be maintained for each patient admitted to the hospital or accepted for treatment.~~

~~— (a) All records shall be readily available upon the request of:~~

~~— (i) The attending physician;~~

~~— (ii) The hospital or its medical staff or any authorized officer, agent or employee of either;~~

~~— (iii) Authorized representatives of the Department for determining compliance with licensure rules;~~

~~— (iv) Any other person authorized by consent form.~~

~~— (A) The consent form shall include the name of the person who is the subject of the record, notification to whom the record is to be released to, signature of the person authorized to grant the release and the date of the consent for release.~~

~~— (B) The hospital shall implement a policy which will educate individuals signing a consent form to ensure that they are informed that the consent may be withdrawn only through written notification.~~

~~— (b) When a patient has medical records in more than one department of the hospital, a system shall be established to quickly retrieve all of his records when requested by professional staff for the care and treatment of that patient.~~

~~— (c) The hospital medical record shall be indexed according to disease, procedure, and physician. The indexes shall be current within six months following discharge of the patient.~~

~~— (d) Medical records are the property of the hospital and shall not be removed from the hospital's control except by court order or subpoena.~~

~~— (e) Medical records for persons who have received or requested admission to alcohol or drug programs shall comply with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."~~

~~[(5) Medical Record Entries:~~

~~— (a) All medical record entries shall be dated and authenticated including the identity of the authors.~~

~~— (i) Identification may include signatures, initials, or computer key;~~

~~— (ii) Delegating the use of rubber stamps to other individuals is prohibited.~~

~~— (b) Records of discharged patients shall be completed within a reasonable time period, but not to exceed 30 days after discharge. A medical record shall ordinarily be considered complete when the required contents are assembled and authenticated. Completion of the medical record is the responsibility of the attending physician.]~~

~~(3) All medical record entries shall be legible, complete, authenticated, and dated by the person responsible for ordering the service, providing or evaluating the service, or making the entry. Prepared transcriptions of dictated reports, evaluations and consultations must be reviewed by the author before authentication.~~

~~(a) The authentication may include written signatures, computer key, or other methods approved by the governing body and medical staff to identify the name and discipline of the person making the entry.~~

~~(b) Use of computer key or other methods to identify the author of a medical record entry is not assignable or to be delegated to another person.~~

(c) There shall be a current list of persons approved to use these methods of authentication. Hospital policies shall include appropriate sanctions for the unauthorized or improper use of computer codes.

(d) Verbal orders for the care and treatment of the patient shall be accepted and transcribed by qualified personnel and authenticated as stated in hospital policy.

~~— (6) Retention and Storage:~~

~~— (a) Complete medical records for all patients shall be retained for seven years after the last date of patient care, or three years after a minor reaches the age of 18, whichever is greater.~~

~~— (b) Prior to destroying a patient's record, a summary shall be retained containing:~~

~~— (i) Name;~~

~~— (ii) Medical record number;~~

~~— (iii) Date of birth, admission, and discharge;~~

~~— (iv) Nearest relative, if available;~~

~~— (v) Attending physician;~~

~~— (vi) Final diagnosis;~~

~~— (vii) Surgical procedure or procedures;~~

~~— (viii) Pathological findings.~~

~~— (c) The facility shall completely destroy the medical record to maintain confidentiality.~~

~~— (d) When a hospital ceases operation, provision shall be made for appropriate safe storage and prompt retrieval of all medical records, patient indexes and discharges for the period specified in R432-2-16. The hospital may arrange for storage of medical records with another hospital or may return patient medical records to the attending physician if he is still in the community.]~~

(4) Medical record services shall be available for all persons admitted to, or provided services by the hospital.

(a) Patient records shall be organized as directed by hospital policy.

(b) Medical records shall be reviewed at least quarterly for completeness, accuracy, and adherence to hospital policy.

(c) Records of discharged patients shall be collected, assembled, reviewed for completeness, and authenticated within 30 days of the patient's discharge.

(d) Medical records shall be retained for at least seven years. Medical records of minors shall be kept until the age of eighteen plus four years, but in no case less than seven years.

(e) Medical records may be destroyed after being retained the minimum length of time, according to hospital policy. Prior to destruction of the record, the following information shall be extracted and retained:

(i) Patient name, medical record number, next of kin, date of birth, admission and discharge date(s); and,

(ii) The name of attending physician(s), admitting and discharge diagnoses, surgical procedures(s) and pathological and diagnostic findings.

(f) If a hospital ceases operation, the hospital shall make provision for secure, safe storage and prompt retrieval of all medical records, patient indexes and discharges for the period specified in R432-2-14. The hospital may arrange for storage of medical records with another hospital, or an approved medical record storage facility, or may return patient medical records to the attending physician if the physician is still in the community.

~~— (7) General Contents of the Medical Record:~~

~~— All medical records shall contain the following:~~

~~(a) Demographic data;~~

~~(b) Medical history. A durable and legible copy of the medical history obtained within 24 hours or a history which has been obtained within one week of admission may be used in the patient's hospital record providing changes, if any, have been recorded at the time of admission;~~

~~(c) Relevant physical examination. A durable and legible copy of the physical examination obtained within one week of admission may be used in the patient's hospital record providing changes, if any, have been recorded at the time of admission;~~

~~(i) When a patient is readmitted within 30 days for the same or a related problem, an interval history and physical reflecting any subsequent changes may be used provided the original information is readily available;~~

~~(ii) The medical record shall document a current, thorough physical examination prior to surgery except in case of an emergency when an admission note including significant findings and diagnosis may be written;~~

~~(d) Diagnoses including principal, provisional, final, and associate diagnoses;~~

~~(e) Laboratory reports. The original lab reports shall be entered in the patient's record with a copy kept in the laboratory. A durable and legible copy of the laboratory report obtained within one week of admission may be used in the patient's hospital record providing changes, if any, have been recorded at the time of admission;~~

~~(f) X-ray reports. The original signed radiological report shall be entered in the patient's record with a copy filed in the radiology department. A durable and legible copy of the laboratory report obtained within one week of admission may be used in the patient's hospital record providing changes, if any, have been recorded at the time of admission;~~

~~(g) Evidence of informed consent or the reason it is unattainable. It shall be signed and witnessed;~~

~~(h) Diagnostic and therapeutic orders by physicians and other authorized practitioners. Verbal orders shall be accepted and transcribed by qualified personnel;~~

~~(i) Verbal orders for medications and treatments shall be signed promptly within a time and manner specified by the hospital's bylaws;~~

~~(j) Anesthesia record;~~

~~(k) Pathology report;~~

~~(l) Clinical observations including progress notes, consultation reports, and nursing notes;~~

~~(m) When oxygen is prescribed for newborn infants, its use shall be recorded. Oxygen concentration levels shall be recorded at least hourly in accordance with a written policy of the newborn nursery;~~

~~(n) When there is a post-anesthesia care unit, the medical record shall include all pertinent events occurring as the patient emerges from anesthesia. Similar information shall be recorded in the medical records of patients whose post-anesthesia recovery takes place in other than a post-anesthesia care unit;~~

~~(o) Discharge summary;~~

~~(p) Autopsy findings;~~

~~(q) Reports of procedures, tests, and results. If this includes reports from any facilities outside the hospital, the facilities shall be identified on the report;~~

~~(r) Physician identification[.];~~

~~(8) Obstetrical Record:~~

~~In addition to the requirements for medical records, the obstetrical record shall include:~~

~~(a) Admission history and physical examination which has been updated to the time of delivery or pre-natal examination. In the absence of a pre-natal examination, a history and physical shall be taken;~~

~~(b) Labor notes;~~

~~(c) Obstetrical anesthesia record;~~

~~(d) Delivery records;~~

~~(e) Operative report, where indicated;~~

~~(f) Discharge summary for complicated deliveries. In the case of an uncomplicated delivery, a final progress note may be substituted for the discharge summary;~~

~~(g) Record of administration of Rh immune globulin;~~

~~(9) Newborn Infant Record:~~

~~In addition to the requirements for obstetrical medical records, the newborn record shall include:~~

~~(a) A copy of the maternal history from the mother's record including relevant family history, serological test for syphilis, Rh status, analgesia, anesthesia, length of labor, and type of delivery;~~

~~(b) Date and hour of birth; period of gestation; sex; reactions after birth; delivery room care; temperature; weight; time of first urination; and number, character, and consistency of stools;~~

~~(c) The identification number of the newborn screening kit, referred to in R398-1;~~

~~(d) Record of ophthalmic prophylaxis;~~

~~(e) Documentation of the physical examination completed at birth and discharge;~~

~~(f) If the infant is discharged to any person other than the infant's parents then the hospital shall record the name and address of such person and where the infant shall be taken;~~

~~(10) Emergency Room Record:~~

~~(a) For each patient seen or treated in the emergency room there shall be an emergency record that is integrated into the patient's overall record or record identification system.~~

~~(b) It shall include:~~

~~(i) Patient identification;~~

~~(ii) Time and means of arrival;~~

~~(iii) Emergency care given to the patient prior to arrival;~~

~~(iv) A short history;~~

~~(v) Physical findings;~~

~~(vi) Lab and x-ray reports, if performed;~~

~~(vii) Diagnosis;~~

~~(viii) Record of treatment;~~

~~(ix) Prognosis;~~

~~(x) Disposition of case;~~

~~(xi) Discharge instructions;~~

~~(xii) Signature of physician rendering service;~~

~~(xiii) When a patient leaves against medical advice, a statement to that effect;~~

~~(11) Outpatient Records:~~

~~Complete and accurate records shall be maintained and available to the other professional services of the hospital.~~

~~(a) The outpatient medical record shall be integrated with the patient's overall hospital record or record identification system.~~

~~(b) It shall include all information required for an inpatient record, plus discharge instructions;~~

~~(12) Other Records:~~

~~The following hospital records shall be maintained:~~
~~(a) Record of admissions, discharges, and number of autopsies performed. Data shall be maintained for all patients[;].~~

~~(b) Vital statistics. The official records for vital statistics are the responsibility of the administrator. They include:~~

~~(i) Register of births;~~

~~(ii) Register of deaths;~~

~~(iii) Register of operations;~~

~~(iv) Register of narcotics.~~

~~(13) Vital Statistics:~~

~~(a) Birth Certificates (Section 26-2-5). For each live birth which occurs in this state the hospital shall comply with Section 26-2-5 and Section 26-2-5.5.~~

~~(b) Death Certificate (Section 26-2-13):~~

~~The issuance of a death certificate shall comply with Section 26-2-13.~~

~~(c) Fetal Death Certificate (Section 26-2-14):~~

~~A fetal death certificate shall comply with Section 26-2-14.~~

~~(14) Policies:~~

~~(a) The hospital shall have written policies approved by the medical staff and administration relating to medical records. They shall be reviewed annually and enforced through an organized quality assurance program.~~

~~(b) The policies shall provide for at least the following:~~

~~(i) Duties of the director and ART or RRA;~~

~~(ii) Educational requirements for medical records personnel;~~

~~(iii) Release of information including child abuse records, psychiatric records, and drug and alcohol abuse records;~~

~~(iv) Preparation of medical records;~~

~~(v) Filing and record storage;~~

~~(vi) Transportation of medical records;~~

~~(vii) Indexing;~~

~~(viii) Coding;~~

~~(ix) Statistical reporting;~~

~~(x) Security and confidentiality of records;~~

~~(xi) Destruction of records;~~

~~(xii) Authorization of individuals for access or non-access to the medical record;~~

~~(xiii) Retention of medical records;~~

~~(xiv) Prohibition against delegation of rubber stamp usage;~~

~~(xv) Duration or revocation of consent and releases.]~~

(5) A complete medical record shall be established and maintained for each patient admitted to, or who receives hospital services. Emergency and outpatient records shall document the service rendered, and shall contain other pertinent information in accordance with hospital policy.

(a) Each medical record shall contain patient identification and demographic information to include at least the patient's name, address, date of birth, sex, and next of kin.

(b) Each medical record shall contain initial or admitting medical history, physical and other examinations or evaluations. Recent histories and examinations may be substituted if updated to include changes that reflect the patient's current status.

(c) Each medical record shall contain admitting, secondary and principal diagnoses.

(d) Each medical record shall contain results of consultive evaluations and findings by persons involved in the care of the patient.

(e) Each medical record shall contain documentation of complications, hospital acquired infections, and unfavorable reactions to medications, treatments, and anesthesia.

(f) Each medical record shall contain properly executed informed consent documents for all procedures and treatments ordered for, and received by, the patient.

(g) Each medical record shall document that the facility requested of each admitted person whether the person had initiated an advanced directive as defined in the Personal Choice and Living Will Act, UCA 75-2-1102.

(h) Each medical record shall contain all practitioner orders, nursing notes, reports of treatment, medication records, laboratory and radiological reports, vital signs and other information that documents the patient condition and status.

(i) Each medical record shall contain a discharge summary including outcome of hospitalization, disposition of case with an autopsy report when indicated, or provisions for follow-up.

(j) Each medical record shall contain a completed Inquiry of Anatomical Gift form or a modified hospital death form which has been approved by the Utah Department of Health as required by Section 26-28-6, UCA.

(k) Medical records of surgical patients shall contain a pre-operative history and physical examination; surgeon's diagnosis; an operative report describing a description of findings; an anesthesia report including dosage and duration of all anesthetic agents and all pertinent events during the induction, maintenance, and emergence from anesthesia; the technical procedures used; the specimen removed; the post-operative diagnosis; and the name of the primary surgeon and any assistants written or dictated by the surgeon within 24 hours after the operation.

(l) Medical records of obstetrical patients shall contain a relevant family history, a pre-natal examination, the length of labor and type of delivery with related notes, the anesthesia or analgesia record, the Rh status and immune globulin administration when indicated, a serological test for syphilis, and a discharge summary for complicated deliveries or final progress note for uncomplicated deliveries.

(m) Medical records of newborn infants shall contain in addition to the requirements for obstetrical medical records:

(i) A copy of the mother's delivery room record, date and hour of birth, period of gestation, sex, reactions after birth, delivery room care, temperature, weight, time of first urination, and number, character, and consistency of stools;

(ii) Documentation of the physical examination completed at birth and discharge, record of ophthalmic prophylaxis, the identification number of the newborn screening kit, referred to in R398-1;

(iii) If the infant is discharged to any person other than the infant's parents, the hospital shall record the authorization by the parents, state agency, or court authority and record the name and address of such person, including where the infant was taken.

(n) Emergency department patient medical records shall be integrated into the hospital medical record and include time and means of arrival, emergency care given to the patient prior to arrival, history and physical findings, lab and x-ray reports, diagnosis, record of treatment, and disposition and discharge instructions.

(o) Patient medical social services records shall include a medical-social or psycho-social study of referred inpatients and

outpatients; the financial status of the patient, social therapy and rehabilitation of patients, environmental investigations for attending physicians, and cooperative activities with community agencies.

(p) Medical records of patients receiving rehabilitation therapy shall include a written plan of care appropriate to the diagnosis and condition, a problem list, and short and long term goals.

(6) The medical records department shall maintain records, reports and documentation of admissions, discharges, and the number of autopsies performed.

(7) The medical records department shall maintain vital statistic registries for births, deaths, and the number of operations performed. The medical records department shall report vital statistics data in accordance with the Vital Statistics Act, Utah Health Code, (26-2, UCA).

R432-100-~~32~~34. Central Supply Services.

(1) ~~[Organization:~~

~~—(a)—[The central supply service supervisor shall be qualified for the position by education, training, and experience.~~

~~—(b)—[New employees shall receive initial orientation and on-the-job training.~~

~~—(c)—[All employees, including the supervisors, shall participate in documented continuing education and in-service programs.~~

~~—(d)—[Educational programs shall include sterile supply processing and handling techniques, personal hygiene, infection control, and safety.]~~

(2) ~~[Facilities and Equipment:~~

~~—(a)—[The hospital shall provide space and equipment for the cleaning, disinfecting, packaging, sterilizing, storing, and distributing of medical and surgical patient care supplies.~~

~~[(b)](a) A hospital central service area shall provide for the following:~~

~~(i) A decontamination area which shall be separated by a barrier or divider to allow the receiving, cleaning, and disinfection functions to be performed separately from all other central service functions;~~

~~(ii) A linen assembly or pack-making area which shall have ventilation to control lint.~~

~~[(A)]The linen assembly or pack-making [A]area shall be separated from the general sterilization and processing area. [The linen assembly area shall have a light table available for the inspection of linen.~~

~~—(B) All patching of linen shall be by vulcanized-heat pressure patches or equivalent.]~~

~~(iii) The sterilization area shall contain[recognized] hospital sterilizers with approved controls and safety features.~~

~~[(e)](b) The accuracy of the sterilizers' performance shall be checked by a[~~n approved~~] method that includes a permanent record of each run.~~

~~[(d)](c) Sterilizers shall be tested by biological monitors at least weekly.~~

~~[(t)](d) If gas sterilizers are used, they shall be inspected, maintained, and operated in accordance with the manufacturer's recommendations.[located at least 12 feet from traffic or work areas; or written policies that require all employees to stay 12 feet away from the sterilizer for at least 15 minutes after it is opened.~~

~~—(ii) Sterilizers shall be tested with biological monitors for each load. The results shall be ascertained prior to the use of gas-sterilized items.~~

~~—(iii) If the quarantine period cannot be adhered to, the item shall be labeled "quarantine time not assured."~~

~~—(e) Gas sterilizers shall be vented to the outside and shall have a purge cycle and a gas separator. The gas-sterilizing cycle shall not be interrupted to remove items in the process of sterilization.~~

~~—(f) The aerator shall be vented to the outside. The aerator shall not be opened for at least two hours after the start of the aeration cycle unless specified by the manufacturer.]~~

~~[(g)](3) The storage area shall be separated into sterile and non-sterile areas. The storage area shall have temperature and humidity controls, and shall be free of excessive moisture and dust. Outside shipping cartons shall not be stored in this area.~~

~~—(i) Supplies shall be stored at least eight inches off the floor, and 18 inches from the ceiling. Dust covers, closed cabinets, or shelving may be used as a protective measure.~~

~~—(ii) Outside shipping cartons shall not be stored in this area.~~

~~—(h) All service equipment in central supply shall be placed on a documented preventive maintenance program.]~~

~~[(i)](4) During each shift that central service is staffed, counter tops and tables shall be wiped with a broad spectrum disinfectant.~~

~~[(j)](5) All apparel worn in central supply shall be issued and laundered [by the hospital]according to hospital policy.~~

~~—(i) When central supply employees leave their department for other areas of the hospital, they shall wear cover gowns or change clothing on their return.~~

~~—(ii) Shoe covers shall be worn in the central supply area unless shoes are dedicated and worn only in the central supply department.~~

~~—(3) Policies and Procedures:~~

~~—(a) The department shall have written policies and procedures approved by the Infection Control Committee.~~

~~—(b) They shall include the following:~~

~~—(i) Methods of receiving, decontaminating, cleaning, preparing, and disinfecting all reusable supplies and equipment;~~

~~—(ii) Methods for dating and listing contents of packages and materials to be used for all items autoclaved or sterilized including load number, sterilizer number, expiration date, and initials of person preparing the pack;~~

~~—(iii) Methods for assembling, wrapping, storing, distributing, and assuring the quality of sterile equipment and medical supplies;~~

~~—(iv) Operation of autoclaves and sterilizers;~~

~~—(v) Shelf life of packages;~~

~~—(vi) Recording temperature, time, and pressures for autoclaves and sterilizers;~~

~~—(vii) Maximum size of linen packs shall be 12 inches x 12 inches x 20 inches and maximum weight shall be 12 pounds;~~

~~—(viii) The testing of steam and hot-air sterilizers with live bacterial spores at least weekly;~~

~~—(ix) The use of chemical indicators for each packet of items sterilized;~~

~~—(x) Aeration requirements for each category of gas-sterilized items;~~

~~—(xi) Procedure for cleaning and disinfecting of all items;~~

~~—(xii) Procedure for upkeep of shelves, carts, walls, and vents;~~

~~—(xiii) Acquisition of supplies after normal working hours or any time the central service supply unit is considered "closed" or not staffed;~~

~~—(xiv) The recall and disposal or reprocessing of outdated sterile supplies. The attending physician shall be notified promptly when patients are exposed to suspected unsterile supplies;~~

~~(xv) The emergency collection and disposition of supplies when special warnings have been issued by the manufacturer. The attending physician shall be notified if patient exposure is suspected;~~

~~(xvi) Preventive maintenance schedule for equipment;~~

~~(xvii) Guidelines for personal hygiene, grooming, wearing apparel including shoes or shoe covers;~~

~~(xviii) Continuing education;~~

~~(xix) If ethylene oxide is used, a procedure to follow in the event of spills that includes the care and monitoring of exposed personnel.]~~

R432-100-~~34~~35. Laundry Service.

(1) ~~[Organization:~~

~~(a) Responsibility for the direction of the laundry service shall be vested in a person whose qualifications, authority, responsibilities and duties are defined or approved by the administrator. [The director shall have the administrative responsibility for the laundry service.]~~

~~(b)(a) Hospitals using commercial linen services shall require written assurance from the commercial service that standards in this subsection shall be maintained.~~

~~(i) Clean linen shall be completely packaged and protected from contamination until received by the hospital;~~

~~(ii) The use of a commercial linen service does not relieve the hospital from its quality [assurance]improvement responsibilities.~~

~~(c)(b) The laundry area shall be planned, equipped, and ventilated to prevent the dissemination of contaminants. The ventilation system shall include adequate intake, filtration, exchange rate, and exhaust.~~

~~(d)(c) A soiled linen processing area, when located in the hospital, shall be separated from the clean linen processing area, from patient rooms, from areas of food preparation and storage, and from areas in which clean material and equipment are stored.~~

(2) ~~[Soiled Linen:~~

~~(a) Soiled linen shall be collected in a manner to minimize cross-contamination.~~

~~(a) When soiled linen is collected from patient areas, it shall be placed in a bag or container. Containers shall be properly closed as filled ~~or~~and before further transport.~~

~~(i) Soiled linen shall be sorted only in a sorting area.[:]~~

~~(ii) Handwashing is required after handling soiled linen and prior to handling clean items. [is required;]~~

~~(iii) Employees handling soiled linen shall wear protective clothing which must be removed before leaving the soiled work area.~~

~~(b) Soiled linen shall be transported separately from clean linen.~~

~~(c) Soiled linen from isolation areas and septic surgical cases shall be identified and suitable precautions shall be taken in its subsequent processing.~~

(3) ~~[Clean Linen:~~

~~(a) [There]The hospital shall maintain[be] a supply of clean linen.~~

~~(a) [H]Clean linen shall be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.~~

~~(b) Clean linen shall be stored in enclosed closet areas or carts.~~

~~(c) [AH]Clean linen shall be covered during [transportation]transport.~~

~~(4) The hospital is responsible to launder employee scrubs that are worn in the following areas:~~

~~(a) surgical areas;~~

~~(b) labor and delivery areas;~~

~~(c) nursery areas;~~

~~(d) other areas as required by the Occupational Health and Safety Act.~~

~~(5) If hospital employee scrubs are designated as uniforms that may be worn to and from work, policies and procedures shall be developed and implemented defining the scope and usage of scrubs as uniforms including hospital storage of employee scrubs, and provisions for hospital-provided scrubs in case of contamination.~~

~~[(4) Policies and Procedures:~~

~~(a) There shall be written policies and procedures concerning the scope and conduct of the laundry and linen.~~

~~(b) These policies shall include at least:~~

~~(i) The responsibilities of the director;~~

~~(ii) The responsibilities of the staff, including the nursing, housekeeping, and laundry staffs;~~

~~(iii) Operational requirements;~~

~~(iv) Maintenance of equipment;~~

~~(v) Laundering methods;~~

~~(vi) Pick-up and delivery procedures;~~

~~(vii) Storage of clean and soiled linen;~~

~~(viii) Infection control.~~

~~(5) The hospital shall have a linen committee, appointed by the administrator, which meets at least quarterly, or there shall be a laundry representative available to the Infection Control Committee as needed.]~~

R432-100-~~38~~36. Housekeeping Services.

~~(1) There shall be housekeeping services to maintain a clean, safe, sanitary, and healthful environment in the facility.~~

~~(2) If the facility contracts for housekeeping services with an outside [agency]service, there shall be a signed and dated agreement that details the services provided.~~

~~(3) The hospital shall provide safe, secure storage of cleaners and chemicals. Cleaners and chemicals stored in areas that may be accessible to patients shall be kept secure in accordance with hospital policy.~~

~~(4) Storage and supplies in all areas of the hospital shall be stored at least four inches off the floor, and at least 18 inches below the lowest portion of the sprinkler system.~~

~~[(2) The administrator shall employ a qualified person to direct the housekeeping services.~~

~~(a) The facility shall employ a sufficient number of housekeeping staff to maintain the interior of the building.~~

~~(b) Housekeeping personnel shall be trained in proper procedures for cleaning rooms, equipment, trays, disposing of trash, and handling soiled and clean linen.]~~

~~(e)5 Personnel engaged in housekeeping or laundry services may not be engaged simultaneously in food service or patient care.~~

~~[(3) Written housekeeping policies and procedures shall be developed and implemented by each facility.~~

~~(a) The policies and procedures shall be reviewed and updated annually.~~

~~—(b) The policies and procedures shall address personnel, maintenance schedules, equipment and supplies.]~~

~~(e) (g) If personnel work in food or direct patient care services, facility policy shall be established and followed to govern the transition from housekeeping services to patient care.~~

R432-100-37. Maintenance Services.

(1) There shall be ~~[adequate]~~ maintenance services to ensure that ~~[the]~~ facility equipment~~[-]~~ and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of patients, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance.

(b) If the facility contracts for maintenance services, there shall be a signed and dated agreement that details the services provided.

~~—(c) The facility shall develop and implement a written maintenance program, including preventive maintenance, to ensure continued operation of the facility and sanitary practices throughout the facility.~~

~~—(2) Each facility shall annually review the maintenance program including:~~

~~—(a) All buildings, fixtures, equipment and spaces shall be maintained in operable condition;~~

~~—(b) Qualified personnel shall be employed to provide maintenance services;]~~

(c) A pest-control program shall be conducted to ensure the facility is free from vermin and rodents.

(d) Entrances, exits, steps, ramps, and outside walkways shall be maintained in a safe condition with regard to snow, ice and other hazards.

(2) All patient care equipment shall be tested, calibrated and maintained in accordance with the specifications from the manufacturer.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Testing or calibration procedures conducted by an outside agency or service shall be documented and available for Department review.

(3) Hot water at public and patient faucets shall be delivered between 105 to 120 degrees Fahrenheit.

R432-100-~~[36]~~38. Emergency and Disaster Plan[s].

(1) ~~[General Provisions:~~

~~—(a)—]The hospital [shall be]is responsible to assure the safety and well-being of patients. There must be provisions for the maintenance of a safe environment in the event of an emergency or disaster.[~~

~~—(b)] An emergency or disaster may include utility interruption such as gas, water, sewer, fuel [and]or electricity interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.~~

(2) ~~[Essential Policies:~~

~~—(a)—]The administrator or [his—]designee [shall be]is responsible for the development of a plan, coordinated with state and local emergency or disaster offices, to respond to emergencies or disasters. This plan shall be in writing and list the coordinating authorities by agency name and title. The plan shall be distributed~~

or made available to all hospital staff to assure prompt and efficient implementation.

~~(d) (a) The plan shall be reviewed and updated as necessary in coordination with local emergency or disaster management authorities. The plan shall be available for review by the Department.~~

~~(e) (b) The administrator or designee [shall be]is in charge of operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the hospital to relieve subordinates and take charge of the situation.~~

~~—(d) Staff shall receive education and training and be given simulated drills to insure appropriate response in an emergency. Drills and training shall be documented and shall comply with applicable laws and rules.]~~

~~(e) (c) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies and appropriate communication and emergency transport systems shall be readily available to all hospital staff.~~

~~(3) [Emergency Procedures:~~

~~—]The hospital's emergency response procedures shall address the following:~~

(a) evacuation of occupants to a safe place within the hospital or to another location;

(b) delivery of essential care and services to hospital occupants by alternate means regardless of setting;

(c) delivery of essential care and services when additional persons are housed in the hospital during an emergency;

(d) delivery of essential care and services to hospital occupants when staff is reduced by an emergency;

(e) maintenance of safe ambient air temperatures within the hospital.

~~—(i) Emergency heating must have the approval of the local fire department.~~

~~—(ii) An ambient air temperature of 58 F (14 C) or lower may constitute a danger to the health and safety of the patients in the hospital. The person in charge shall take immediate and appropriate action.]~~

(4) [Emergency Plan:]The hospital shall have an emergency plan that is current and appropriate to the operation and construction of the hospital. The plan shall be approved by the administrator and governing board.

(a) The hospital's emergency plan shall delineate:

(i) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) the individuals who shall be notified in an emergency in order of priority. Telephone numbers shall be accessible to staff at each nurses station;

(vi) method of transporting and evacuating patients and staff to other locations;

(vii) conversion of hospital for emergency use.

(b) ~~[There shall be documentation of]~~The hospital shall document emergency events and responses and ~~[a]~~record ~~[of]~~ patients and staff evacuated from the hospital to another location. Any ~~[patient]~~emergency involving patients shall be documented in the patient record.

(c) Simulated disaster drills shall be held semiannually for all staff~~[-, in addition to fire drills].~~

~~[-(d) There shall be semiannual in-service training on disaster preparedness for all staff.]~~

(d) Fire drills and fire drill documentation shall be in accordance with the State of Utah Fire Prevention Board.

(5) ~~[Fire Emergencies:~~

~~-(a)-]There shall be a fire emergency evacuation plan, written in consultation with qualified fire safety personnel.~~

~~-(b) A physical plant evacuation diagram delineating evacuation routes, location of fire alarm boxes and fire extinguishers, and emergency telephone numbers of the local fire department shall be posted in exit access ways throughout the hospital.~~

~~-(c) The written plan shall include fire-containment procedures and how to use the hospital alarm systems and signals.~~

~~-(d) At least one fire drill per shift per quarter shall be held each year. The drill, including a brief description of the event and participants, shall be documented for review by the Department. The actual evacuation of patients during a drill is optional.]~~

KEY: health facilities

~~[December 18, 1997]~~**June 16, 1998**

26-21-5

Notice of Continuation December 15, 1997



Health, Health Systems Improvement,
Health Facility Licensure
R432-102-14
Patient Record

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21005

FILED: 04/20/98, 12:09

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: During the five-year review of the rule a sub-committee appointed by the Health Facility Committee has recommended changes to the rules. An informal hearing was held at the Health Facility Committee meeting on May 15, 1997 and the changes were approved by the affected parties and the committee. These changes are submitted in response to an unmarked change letter from the Division of Administrative Rules dated March 6, 1998. These changes were intended to be in the December 1997 rule filing.

(DAR Note: The December 1997 rule filing, R432-102 (DAR No. 20558), was published in the January 15, 1998, issue of the *Utah State Bulletin*, and is effective as of 02/24/98.)

SUMMARY: The rule changes clarify requirements for individual treatment plans in the "Patient Records" section of the rule. A section was also added to the rule exempting the Utah State Hospital from time frames when initiating and reviewing individual treatment plans.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 26-21-2

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes proposed in the rule will apply to one licensed facility who meets the proposed rule.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Debra Wynkoop-Green at the above address, by phone at (801) 538-6320, by FAX at (801) 538-6325, or by Internet E-mail at dwynkoop@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Rod L. Betit, Executive Director

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-102. Specialty Hospital - Chemical Dependency/Substance Abuse.

R432-102-14. Patient Record.

(1) Refer to R432-100-35, Medical Records.

(2) The content of the patient record shall contain in addition:

(a) ~~[a patient assessment that shall include a medical, psycho-social, substance abuse, and treatment history;~~

~~-(b) an individualized treatment plan based on the patient assessment including goals and methods of treatment. The plan shall be reviewed and updated quarterly for outpatient care and every week for inpatient clients;~~

~~-(c)-]progress notes, including description and date of service, with a summary of client progress, signed by the therapist or service provider;~~

~~[(d)]b) a discharge summary, including final evaluation of treatment and goals attained and signed by the therapist.~~

(3) A written individual treatment plan shall be initiated for each patient upon admission and completed no later than seven working days after admission.

(a) The individual treatment plan shall be part of the patient record and signed by the person responsible for the patient's care. Patient care shall be administered according to the individual treatment plan.

(b) Individual treatment plans must be reviewed on a weekly basis for the first three months, and thereafter at intervals determined by the treatment team, but not to exceed every other month.

(c) The written individual treatment plan shall be based on a comprehensive functional medical, psycho-social, substance abuse, and treatment history assessment of each patient. When appropriate, the patient and family shall be invited to participate in the development and review of the individual treatment plan. Patient and family participation shall be documented.

(d) The individual treatment plan shall be available to all personnel who provide care for the patient.

(e) The Utah State Hospital is exempt from the time frames for initiating and reviewing the individual treatment plan. The Utah State Hospital shall initiate for each patient admitted an individual treatment plan within 14 days and shall review the plan on a monthly basis.

(4) The confidentiality of the records of substance abuse patients shall be maintained according to the federal guidelines is adopted and incorporated as reference 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

KEY: health facilities
[February 24, 1998] June 1998 26-21-5
Notice of Continuation December 15, 1997 26-21-2.1
26-21-20



**Human Resource Management,
Administration
R477-1
Definitions**

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 21062
FILED: 05/01/98, 10:38
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To add new definitions and amend current definitions in order to coincide with changes in the state classification and position control systems. These changes are needed with the implementation of Human Resource Enterprise, the new state human resource management information system. This amendment also implements a policy change on

administrative salary movement to give agencies more flexibility to address employee salary concerns.

SUMMARY: Amendments to definitions of "Administrative Adjustment," "Administrative Salary Decrease," and "Administrative Salary Increase." These definitions are changed to give managers the flexibility to use the entire salary range for these types of salary adjustments. Previously, managers could only give up to four steps with an administrative adjustment. The use of new terms have effected many definitions: "job class" is now "job," "appointment register" or "register" is now "hiring list," "minimum qualifications" is now "job requirements," and "Schedule 6" is now "position management report." All definitions which included these terms are amended. New definitions are written for "Assignment," "HRE," "Job Identification Number," and "Position."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None.
- ❖ LOCAL GOVERNMENTS: None.
- ❖ OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None, this rule does not affect anyone outside state government.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Resource Management
Administration
2120 State Office Building
PO Box 141531
Salt Lake City, UT 84114-1531, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/17/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/27/98

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

**R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.**

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: A discretionary act of termination resulting from an employee's unexcused absence from work or failure to come to work for three consecutive days when the employee is capable, but does not properly notify his supervisor.

(2) Active Duty: Full-time active military and reserve duty; a term used for veteran's preference adjustments. It does not include active or inactive duty for training or initial active duty for training.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments. This time is calculated in increments of 15 minutes or more for purposes of overtime accrual, and shall not include "on-call," holiday leave, or any other leave time taken off during the work period.

(4) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(5) Administrative Adjustment: A DHRM approved change of a position from one job [class] to another job [class] or salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(6) Administrative Salary Decrease: A salary decrease of one [to four] or more pay steps based on non-disciplinary administrative reasons determined by an agency executive director or commissioner.

(7) Administrative Salary Increase: A salary increase of one [to four] or more pay steps based on special circumstances determined by an agency executive director or commissioner.

(8) Agency: Any department, division, institution, office, commission, board, committee, or other entity of state government.

(9) Agency Head: The chief executive officer of each agency or their designated appointee.

(10) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(11) Appeal: A formal request to a higher level review for consideration of an unacceptable grievance decision.

(12) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(13) Assignment: Appointment of an employee to a position.

(14) "At will" Employee: An individual appointed to work for no specified period of time or one who has not acquired career service status and may be terminated at any time without just cause.

(15) Bumping: A procedure that may be applied in a reduction-in-force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points who are in the same categories of work identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(16) Career Exempt Employee: An employee appointed to a position exempt from career service in state employment and who serves at the pleasure of the appointing authority.

(17) Career Exempt Position: A position in state service exempted by law from provisions of competitive career service, as prescribed in 67-19-15 and in R477-2-1(1).

(18) Career Mobility: A time-limited [~~transfer or promotion~~] assignment of an employee to another position of equal or higher salary for purposes of professional growth or fulfillment of specific organizational needs.

(19) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(20) Career Service Status: Status granted to employees who successfully complete a probationary period for competitive career service positions.

(21) Category of Work: Jobs [~~classes~~], work units, or other definable categories of work within departments, divisions, institutions, offices, commissions, boards or committees that are designated by the agency head as the Category of Work to be eliminated through a reduction-in-force. These are subject to review by the Executive Director, DHRM.

(22) Certifying: The act of verifying the qualifications and availability of individuals on the [appointment register] hiring list. The number of individuals certified shall be based on standards and procedures established by the Department of Human Resource Management.

(23) Change of Workload: A change in the work requirements or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(24) Classification Grievance: The approved procedure by which a career service employee may grieve a formal DHRM decision regarding the classification of the employee's position.

(25) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12 of the Utah Code Annotated.

(26) Constant Review: A period of formal frequent review of an employee, not to exceed six months, resulting from substandard performance or unacceptable behavior, as defined by Utah law and contained in these rules. Removal from constant review requires a formal evaluation.

(27) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and shall not accrue benefits.

(28) Demeaning Behavior: Sex-based behavior which lowers the status, dignity or standing of any other individual.

(29) Demotion: A disciplinary action resulting in a salary reduction on the current salary range or the movement of an incumbent from one position to another position having a lower salary range, including a reduction in salary. If this action is taken for a limited time period it shall only be within the current salary range.

(30) Department: The Department of Human Resource Management.

(31) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

(32) Designated Hiring Rule: A rule promulgated by DHRM that defines which individuals on a certification are eligible for appointment to a career service position.

(33) DHRM: The Department of Human Resource Management.

(34) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101, 1994 edition; Equal Employment Opportunity

Commission regulation, 29 CFR 1630 1993 edition; including exclusions and modifications.

(33)35 Disciplinary Action: Action taken by management under the rules outlined in R477-11.

(34)36 Discrimination: Unlawful action against an employee or applicant based on age, disability, national origin, political or religious affiliation, race, sex, military status or affiliation, or any other non-merit factor, as specified by law.

(35)37 Dismissal: A separation from state employment for cause.

(36)38 Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 85, 1993 edition, requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(37)39 Employment Eligibility Certification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324, 1988 edition, as amended, that employers verify the identity and eligibility of individuals for employment in the United States.

(38)40 "Escalator" Principle: Under USERRA, returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(39)41 Equal Employment Opportunity (EEO): Non-discrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

(40)42 Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's hours actually worked, plus additional hours paid but not worked, exceed an employee's normal work period.

(41)43 Executive Director: The executive director of the Department of Human Resource Management.

(42)44 Fair Employment Opportunity and Practice: Assures fair treatment of applicants and employees in all aspects of human resource administration without regard to age, disability, national origin, political or religious affiliation, race, sex, or any non-merit factor.

(43)45 Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(44)46 FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201, 1993 edition et seq.

(45)47 FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

(46)48 FLSA Non-Exempt: Employees who are not exempt from the Fair Labor Standards Act.

(47)49 Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(48)50 Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.

(49)51 Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Board.

(50)52 Gross Compensation: Employee's total earnings, taxable and untaxable, as shown on the employee's paycheck stub.

(53) Hiring List: A list of names of qualified applicants who have successfully met the examination requirements for appointment to the position.

(51)54 Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by sex.

(55) HRE: Human Resource Enterprise; the state human resource management information system.

(52)56 Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

(53)57 Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(54)58 Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(55)59 Interchangeability of Skills: Employees are considered to have interchangeable skills only for those classes of positions they have previously held successfully in Utah state government employment or for those classes of positions which they have successfully supervised and for which they satisfy [minimum qualifications] job requirements.

(56)60 Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

(57)61 Involuntary Reassignment: Management initiated movement of an employee from his current position to a position of an equal or lower salary range, or to a different work location or organization unit for administrative, corrective action or other reasons not included in the definition of demotion or reclassification.

(58)62 Job [~~Class~~]: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same [~~job class title~~], salary range and test standards [~~may be~~] are applied to each position in the group.

~~(59) Job Classification: Allocation of positions to an appropriate job class.]~~

(60)63 Job [~~Class~~]Series: Two or more jobs [~~classes of positions~~] in the same functional area having the same job class title, but distinguished and defined by increasingly difficult levels of duties and responsibilities and requirements.

(61)64 Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

(62)65 Job [~~Qualifications~~]Requirements: [~~Requirements prescribed in the job standard. If qualifications are based on time, training and experience may substitute for one another on a year for year basis~~] Skill requirements defined a the job level.

(63)66 Job [~~Standard~~]Description: A [~~description of~~] document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job [~~class~~].

(67) Job Identification Number: A unique number assigned to a job by DHRM.

(~~64~~68) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(~~65~~69) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(~~66~~70) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a ~~class of position(s)~~ job based on a compensation survey conducted by DHRM.

(~~67~~71) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward performance.

(~~68~~72) Misfeasance: Performance of a lawful action in an illegal or improper manner.

(~~69~~73) Nonfeasance: Omission or failure to do what ought to be done.

(~~70~~74) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(~~71~~75) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.

(~~72~~76) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(~~73~~77) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(~~74~~78) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(~~75~~79) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.

~~[(76) Position Classification Grievance: The approved procedure by which a career service employee may grieve a formal DHRM decision regarding the classification of the employee's position.]~~

(80) Position: An employees unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(81) Position management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

(~~77~~82) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. Salary, retirement service credits and leave benefits for position sharing employees are pro-rated according to the number of hours worked. To be eligible for benefits, position sharing employees must work at least 50% of a full-time equivalent.

(~~78~~83) Probationary Period: A period of time considered part of the selection process, identified ~~[in the job code book]~~ at the

job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(~~79~~84) Productivity Step Adjustment: A management authorized salary increase of one to four steps. Management and employees agree to the adjustment for employees who accept an increased workload resulting from FTE reductions and agency base budget reduction.

(~~80~~85) Promotion: A management initiated action moving an employee from a position in one job ~~class~~ to a position in another ~~job~~ class having a higher maximum salary range of at least two salary steps.

(~~81~~86) Reappointment: Return to work of an employee from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at termination.

(~~82~~87) Reappointment Register: A register of career service employees who have been separated in a reduction in force because of inadequate funds, change of workload or lack of work. It also includes career service employees who accepted exempt positions without a break in service and who were not retained, unless discharged for cause, and those employees who by the Career Service Review Board's decision are placed on the reappointment register.

(~~83~~88) Reasonable Suspicion: Knowledge sufficient to induce an ordinary, reasonable and prudent person to arrive at a conclusion of thought or belief based on factual, non-subjective and substantiated observations or reported circumstances. Factual situations verified through personal visual observation of behavior or actions, or substantiated by a reliable witness.

(~~84~~89) Reclassification: A DHRM approved reallocation of a position from one job ~~class~~ to another job ~~class~~ to reflect management initiated changes in duties and responsibilities as determined through a DHRM classification review.

(~~85~~90) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(~~86~~91) Reemployment: Return to work of an employee who terminated state employment to join the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at termination.

~~[(87) Register: A list of names of qualified applicants who have successfully met the examination requirements for appointment to the position.]~~

(~~88~~92) Rehire: Return to work of a former career service employee who terminated state employment. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at termination.

(~~89~~93) Reprisal: An act of management retaliation taken against an employee.

(~~90~~94) Requisition: An electronic document used for Utah Skill Match search and tracking purposes that includes specific information for a particular position.

(~~91~~95) Return from LWOP: A return to work from any leave without pay status. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out before the leave without pay period began.

(92)96) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

(93)97) RIF'd Employee: An employee who is placed on the reappointment register as a result of a reduction in force.

(94)98) Safety Sensitive Position: A position approved by DHRM that includes the performance of functions:

- (a) directly related to law enforcement; or
- (b) involving direct access or having control over direct access to controlled substance; or
- (c) directly impacting the safety or welfare of the general public.

(95)99) Salary Range: The segment of an approved pay plan assigned to a job[~~class~~].

(96)100) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (Schedule B) or career service exempt (Schedule A).

~~[(97) Schedule 6: A document that lists an agency's authorized and budgeted positions including classifications, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.]~~

(98)101) Serious Health Condition: An illness, injury, impairment, physical or mental condition that involves:

- (a) In-patient care in a hospital, hospice, or residential medical care facility;
- (b) Continuing treatment by a health care provider.

(99)102) Sexual Harassment: Any behavior or conduct of a sexual nature which is severe and pervasive, unwelcome, demeaning, ridiculing, derisive or coercive and results in a hostile, abusive or intimidating work environment.

- (a) Level One: sex role stereotyping
- (b) Level Two: targeted gender harassment/discrimination
- (c) Level Three: targeted or individual harassment
- (d) Level Four: criminal touching of another's body parts or taking indecent liberties with another.

~~[(100) Special Salary Adjustment: A DHRM authorized adjustment in salary to correct administrative errors or other special circumstances.]~~

(101)103) Temporary Transitional Assignment: An assignment on a temporary basis to a position or duties of lesser responsibility and salary range to accommodate an injury or illness or to provide a temporary reasonable accommodation.

(102)104) Transfer: Voluntary assignment of an employee within an agency or between agencies from one position to another position with the same maximum salary [~~range~~]step and for which the employee qualifies, including a change of work location or organizational unit.

(103)105) Underfill: DHRM authorization for an agency to fill a position at a lower salary range within the same job [~~classification~~]series.

(102)106) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, or any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; absence from

work for an examination to determine fitness for any of the above types of duty.

(105)107) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who left state employment to enter the uniformed services and who return to work within a specified time period after military discharge. Employees covered under USERRA are in a leave without pay status from their state position.

(106)108) Utah Skill Match: Utah Skill Match is the state's recruitment and selection system, which includes:

- (a) continuous recruitment of all positions;
- (b) a centralized and automated computer database of resumes and related information administered by the Department of Human Resource Management;
- (c) decentralized access to the database based on delegation agreements.

(107)109) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(108)110) Voluntary Reassignment: Employee initiated movement from a position in one job [~~class~~]to a position in another job [~~class~~]having a lower maximum salary range of at least two salary steps.

(109)111) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(110)112) Volunteer Experience Credit: Credit given in meeting [~~minimum qualifications~~]job requirements to participants who gain experience through unpaid or uncompensated volunteer work with the state, its subdivisions or other public and private organizations.

KEY: personnel management, rules and procedures, definitions*

~~[July 2, 1996]~~June 27, 1998

67-19-6

Notice of Continuation July 1, 1997



Human Resource Management,
Administration
R477-2
Administration

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21063

FILED: 05/01/98, 10:38

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To clarify employee rights to access records and evidence used in disciplinary and formal hearings and to make nonsubstantive amends to reflect changes in definitions and terms.

SUMMARY: Subsection R477-2-6(9) is amended to allow an employee to request a copy of any evidence or record used for disciplinary purposes or in a formal hearing. This language is adopted from rules of evidence and discovery. Previous language merely required that an employee acknowledge the existence of a record or information .

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None.
- ❖LOCAL GOVERNMENTS: None.
- ❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None. This rule does not affect anyone outside state government.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Resource Management
 Administration
 2120 State Office Building
 PO Box 141531
 Salt Lake City, UT 84114-1531, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/17/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/27/98

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.
R477-2. Administration.

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R477-2-6. Records.

(1) DHRM shall maintain a computerized record for each employee that contains the following, as appropriate:

- (a) Performance ratings;
- (b) Records of actions affecting employee salary, current classification, title and salary range, salary history, and other personal data, status or standing.

(2) Agencies shall maintain the following personnel records for each employee:

(a) Applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by Immigration and Naturalization Service (INS) Regulations, under the Immigration Reform and Control Act of 1986, employee signed overtime agreement, personnel action [~~forms 33, 34 and 35~~]records, notices of corrective or disciplinary actions, new employee orientation form, benefits notification forms, performance evaluation records, termination records.

(b) References to or copies of transcripts of academic, professional, or training certification or preparation.

(c) Copies of items recorded in the DHRM computerized record and other materials as required by agency management. The agency personnel record shall be considered a supplement to the DHRM computerized record and shall be subject to the rules governing personnel records.

(d) Leave and time records.

(e) Copies of any documents affecting the employee's conduct, status or salary. The agency shall inform employees of any changes in their records based on conduct, status or salary no later than when changes are entered into the file.

(3) Employees have the right to review their personnel records, upon request, in DHRM or the agency, as governed by law and as provided through agency policy.

(a) Employees may correct, amend, or challenge any information in the DHRM computerized or agency personnel record, through the following process:

- (i) The employee shall request in writing that changes occur.
- (ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee, shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter; the agency's response; and the DHRM Executive Director's decision.

(4) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel record.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed section and the authority for the action.

(5) Upon employee termination, DHRM computerized records shall be retained for thirty years. Agency records shall be retained by the agency for a minimum of two years, then transferred for permanent storage to the State Archives Division to be retained for 28 years.

(6) Information classified as private in both DHRM and agency personnel and payroll records shall be available only to the following people:

- (a) the employee;
- (b) users authorized by law determined in writing by the DHRM Executive Director to have a legitimate "need-to-know";
- (c) individuals who have the employee's written consent. A record of persons reviewing personnel records shall be maintained together with the reasons for access to the records.

(7) Utah is an open records state, according to Chapter 2, Title 63, the Government Records Access and Management Act. The

following information concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be given to the public upon written request where appropriate:

- (a) the employee's name, except for undercover law enforcement personnel;
 - (b) gross compensation;
 - (c) salary range;
 - (d) contract fees;
 - (e) the nature of employer-paid benefits;
 - (f) the basis for and the amount of any compensation in addition to salary, including expense reimbursement;
 - (g) job [class]title;
 - (h) performance plan;
 - (i) education and training background as it relates to qualifying the individual for the position;
 - (j) previous work experience as it relates to qualifying the individual for the position;
 - (k) date of first and last employment in state government;
 - (l) the final disposition of any appeal action by the Career Service Review Board;
 - (m) work location;
 - (n) a work telephone number;
 - (o) city and county of residence, excluding street address;
 - (p) honors and awards as they relate to state government employment;
 - (q) number of hours worked per pay period;
 - (r) gender;
 - (s) other records as approved by the State Records Committee.
- (8) When an employee transfers from one state agency to another, the former agency shall transfer the employee's original file to the new agency. The file shall contain a record of all actions that have affected the employee's status and standing.
- (9) The record the Department and agency hold including other private, protected or controlled records referenced in the agency personnel file shall be considered the official record during any disciplinary proceedings. ~~[No supervisory notes maintained without formal acknowledgment of the employee shall be admissible in disciplinary proceedings. This does not preclude gathering data relative to employee behavior used in preparation of disciplinary action. Prior to use of the data, the employee must be given an opportunity to formally acknowledge its existence.]An employee may request a copy of any documentary evidence used for disciplinary purposes or in any formal hearing regardless of the documents source, prior to such use. This shall not apply to documentary evidence used for rebuttal.~~
- (10) Employee medical information obtained orally or documented in separate confidential files is considered private or controlled information. Communication must adhere to the Government Records Access and Management Act, Section 63-2-101. Employees who violate confidentiality are subject to state disciplinary procedures and may be personally liable for slander or libel.
- (11) In compliance with the Government Records Access and Management Act, only information classified as "public" or "private" which can be determined to be related to and necessary for the disposition of a long term disability or unemployment insurance determination shall be approved for release on a need to know

basis. The agency human resource manager or authorized manager in DHRM shall make the determination.

(12) Employees may verbally request the release of information for personal use; or authorize in writing the release of their performance records for use by an outside agent based on a need to know authorization. "Private" data shall only be released, except to the employee, after a written request has been evaluated and approved.

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KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
~~[August 15, 1997]~~ **June 27, 1998** **67-19-6**
Notice of Continuation July 1, 1997

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Human Resource Management, Administration **R477-5** Filling Positions

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 21066
 FILED: 05/01/98, 10:38
 RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To provide more flexibility to agencies in the posting of their internal position vacancies and to make nonsubstantive amendments to coincide with the use of new terms and changes in definitions and to adopt consistent terminology for the rule on career mobility programs. Language on probationary periods for transfers and involuntary reassignments is moved from this rule to Section R477-6-2, "Probationary Period."

SUMMARY: Section R477-5-5 is amended to remove the requirement to post all position vacancies for a minimum of 5 days when Utah Skill Match is the selection method. Agencies are still required however, to inform their employees according to a plan which they must develop. A five day posting is still required when a selection method other than Utah Skill Match is used.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: This change brings a potential for cost savings. This will be primarily in reduced printing cost and administrative time and will depend on the plans developed in the agencies.
- ❖LOCAL GOVERNMENTS: None.
- ❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not affect anyone outside state government.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Resource Management Administration 2120 State Office Building PO Box 141531 Salt Lake City, UT 84114-1531, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO: Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/17/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/27/98

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.

R477-5. Filling Positions.

R477-5-1. Authorization to Fill a Position.

Agencies shall have sufficient funds to fill positions that are listed in the [Schedule 6] Position Management Report. The Executive Director, DHRM, may authorize exceptions to provisions of this rule, consistent with R477-2-3(1).

Utah Skill Match is the state's recruitment and selection system for career service positions. Agencies shall use Utah Skill Match unless an alternate system has been pre-approved by the Department of Human Resource Management.

.....

R477-5-5. Recruitment Within Agencies.

(1) Agencies shall provide information about internal job opportunities [~~(transfer, promotion or career exchange assignments)~~] to their employees [~~for a minimum of 5 days~~]. Agencies shall develop a consistent, internal recruitment strategy for job families and shall communicate this strategy to their employees.

(a) For agency recruitments when Utah Skill Match is not used, notices shall be announced for a minimum of 5 days within an agency, an organizational unit or work group. Each notice shall include an opening and closing date.

(b) When Utah Skill Match is used, agencies are required to provide their employees information about the Utah Skill Match system.

(c) Recruitment is not required for personnel actions outlined in R477-5-4.(1).

(d) Appointment of employees from the statewide reappointment register must comply with the order of selection specified in R477-5-4.

R477-5-6. Transfer and Voluntary Reassignment.

(1) The agency that receives a transfer or voluntary reassignment of an employee shall verify his career status and that the employee meets the job qualifications for the position.

(a) [~~Probationary employees shall be eligible for transfer or voluntary reassignment and may be required to undergo a new probationary period.~~

~~---(b)---~~ An employee with a disability who is otherwise qualified may be eligible for transfer or voluntary reassignment to a vacant position within the agency as a reasonable accommodation measure, unless it creates an undue hardship on the agency.

(2) Payroll actions involving transfer or voluntary reassignment shall only be allowed at the beginning of a payroll period.

(3) Agencies receiving a transfer or voluntary transfer of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(4) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

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R477-5-8. Rehire.

(1) Former career service employees may be eligible for rehire to any classification for which they are qualified.

(a) Rehired employees must serve a new probationary period, as designated in the official [~~class specification or job standard~~] job description. Rehired employees may also be required to undergo further examination.

(b) Rehired former career service employees may be offered a salary equivalent to their previous career service pay rate. However, their salary may not be less than step one of the new pay range nor more than the maximum of the new pay range.

(2) Career Service exempt employees cannot be rehired to career service positions, except as prescribed by Section 67-19-17.

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R477-5-11. Hiring Lists.

(1) The hiring list shall include the names of qualified and available applicants who have successfully completed all applicable examination(s) and are eligible for appointment or conditional appointment.

(a) Hiring lists shall be constructed using Utah Skill Match or another competitive process approved by DHRM. All competitive processes shall be based on job-related criteria.

(b) All applicants included on a hiring list shall be examined with the same examination or examinations.

(c) An individual shall be considered an applicant when he is determined to be both qualified and available for a particular position identified through a specific requisition.

(2) An applicant may be removed from further consideration when he, without valid reason, does not pursue appointment to a position.

(3) An individual who falsifies any information in the job application, examination or evaluation process may be disqualified from further consideration prior to hire, or disciplined if already hired.

(4) Five percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) has served more than 180 consecutive days of active duty in and honorably discharged or released from the armed forces of the United States; or

(b) is the unremarried surviving spouse of any veteran.

(5) Ten percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) Was honorably discharged or released from active duty with a disability incurred in the line of duty or is a recipient of a Purple Heart, whether or not that person completed 180 days of active duty.

(b) Is the unremarried surviving spouse of any disabled veteran.

(6) The Executive Director, DHRM may enter into delegation agreements with agencies to develop and maintain hiring lists, and certify eligible applicants to their appointing authorities, subject to periodic administrative audits by DHRM.

(7) Selection of intra-departmental RIF employees shall be made in order of their retention points.

(a) The employee with the highest retention points shall be reappointed first, provided that the employee:

(i) Meets job qualifications; and

(ii) Previously attained the position level comparable to the vacancy.

(8) When more than one RIF employee is certified by DHRM, the appointment shall be made from the most qualified.

(9) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.

(10) The appointing authority shall ensure that any employee hired meets the [minimum qualifications]job requirements as outlined in the official job [standard]description.

R477-5-12. Time-Limited Exempt Positions.

The Executive Director, DHRM, may approve the creation and filling of non-career service positions for temporary, emergency, seasonal, intermittent or other special and justified agency needs. These appointments shall be "at will," as described below. See Section 67-19-15 for description of positions exempt from career service employment.

(1) Time-limited, temporary or seasonal non-career appointments, such as schedules AJ, AL and TE, may be made without competitive examination, provided [minimum qualifications]job requirements are met.

(a) The following appointments are temporary, and may not receive benefits:

(i) AJ appointments for positions which are half-time or more shall last no longer than nine months in any 12 consecutive month period.

(ii) TE appointments shall last no longer than 90 working days in the same position.

(b) Appointments under schedules AE, AI and AL shall be non-career positions. AE employees shall receive benefits. AI and AL employees may receive benefits on a negotiable basis.

(i) Schedule AL appointments shall work on time-limited projects for a maximum of two years or on projects with time limited funding.

(ii) Only schedule A appointments made from a hiring list as prescribed by R477-5-11.(3) may be considered for conversion to career service.

(2) Appointments to fill an employee's position who is on approved leave-without-pay shall only be made temporarily. A notice of appointment shall be signed by the parties.

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R477-5-16. Career ~~[Exchange]~~Mobility Programs.

Employees and agencies are encouraged to promote career ~~[exchange]mobility~~ programs.

(1) Agencies may provide career ~~[exchange]mobility~~ assignments inside or outside state government to qualified employees. Career ~~[exchange]mobility~~ programs are designed to develop agencies' resources and to enhance the employee's career growth.

(a) Agencies shall establish policies subject to review and approval by the Executive Director, DHRM, governing career ~~[exchange]mobility~~ programs.

(b) An eligible employee, the agency or supervisor may initiate a career ~~[exchange]mobility~~.

(c) Interested participants shall meet the [minimum qualifications]job requirements of the career ~~[exchange]mobility~~ position.

(2) Agencies shall develop and use written career ~~[exchange]mobility~~ contract agreements between employees and supervisors to outline all program provisions and requirements. The career ~~[exchange]mobility~~ shall be both voluntary and mutually acceptable.

(a) Programs shall conform to equal employment opportunities and practices.

(b) Participating employees shall retain all rights, privileges, entitlements, tenure and benefits from their previous position while on career mobility.

(c) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(3) Career mobility programs require written contracts between both employees and agency management.

(4) If a career mobility assignment does not become permanent at its conclusion, employees shall return to their previous position or a similar position. They shall receive the same salary rate they would have received without the career ~~[exchange]mobility~~ assignment.

(a) Employees who have not attained career service status prior to the career ~~[exchange]mobility~~ program cannot permanently fill a career service position until they have obtained career service status through a competitive process.

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R477-5-18. Underfill.

(1) Underfill shall only be used in circumstances that meet the following conditions:

(a) The position is in the same classification series, as reflected on the ~~[schedule 6]~~ position management report. No position shall be underfilled for more than one year per range level in the series, unless the employee is on corrective action, does not meet the job requirements for the higher level due to an absence for military service covered under USERRA, or as otherwise stipulated in the job ~~[standard]~~ description.

(b) There must be discernible and documented differences in job tasks, duties, responsibilities, qualifications, knowledge, skills and abilities between levels in career ladders.

(c) Agencies utilizing underfill must write guidelines and rules informing supervisors of their responsibility to include:

- (i) the purpose of underfill;
- (ii) the expectations of the supervisor on how the employee can advance within the series;
- (iii) the controls that ensure employees advance to their next level within the series on the ~~[schedule 6]~~ position management report are in place;
- (iv) employees who are not advanced are informed why and what they must do in the future to advance to the next level.

KEY: employment, fair employment practices, hiring practices
~~[August 15, 1997]~~ **June 27, 1998** 67-19-6
Notice of Continuation July 1, 1997



Human Resource Management,
Administration
R477-6
Employee Status and Probation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 21067
FILED: 05/01/98, 10:38
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To consolidate redundant language in the rule governing employee probation periods and to make nonsubstantive changes related to the use of new terms and definitions.

SUMMARY: Section R477-6-2, "Probationary Period," is amended to remove redundant language and to incorporate language moved from Subsection R477-5-6(1).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None.
- ❖ LOCAL GOVERNMENTS: None.
- ❖ OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not affect anyone outside state government.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Resource Management
Administration
2120 State Office Building
PO Box 141531
Salt Lake City, UT 84114-1531, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/17/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/27/98

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.
R477-6. Employee Status and Probation.

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R477-6-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, and responsibilities, skills and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) Employees shall receive full and fair opportunity to demonstrate competence in the job in a career position. As a minimum, a performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) At the end of the probationary period, employees shall receive performance evaluations. Evaluations shall be entered into ~~[the HRMIS system]~~ HRE as the performance evaluation which reflects successful or unsuccessful completion of probation.

(2) Each career position shall be assigned a probationary period consistent with its job~~[class]~~.

(a) The probationary period may not be extended except for periods of leave without pay or workers compensation leave.

(b) The probationary period may not be reduced after appointment.

(3) Employees in career service positions who work at least 50 percent of the time or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) Probationary periods may be interrupted by ~~[leave without pay, workers compensation leave, or]~~ military service covered under USERRA.

(5) An employee serving probation in a competitive career service position is eligible for transfer or voluntary reassignment and may be promoted to another competitive career service position. Each new appointment shall include a new probationary

period unless the agency determines that the required knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period.

(6) A reemployed veteran shall be required to complete the remainder of the probationary period if it was not completed in his pre-service employment.

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KEY: employment, personnel management, state employees
~~August 15, 1997~~ **June 27, 1998** **67-19-6**
Notice of Continuation July 1, 1997

**Human Resource Management,
Administration
R477-7
Compensation**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21068
FILED: 05/01/98, 10:38
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Implement provisions of H.B. 94, "Longevity Amendments for State Employees," and clarify parameters for longevity. Also, establish parameters for agencies who want to implement a non-cash incentive program, clarify parameters for the Productivity Step Adjustment, clarify agency discretion to grant administrative salary increases during the probationary period, and make nonsubstantive language changes to coincide with the use of new terms and changes in definitions.

SUMMARY: In Subsection, R477-7-4(2)(b), "Highest Level Performer," amendments allow employees on longevity to receive the same recognition as other employees except for the step increase. Previous language only allowed a cash bonus. In Subsection R477-7-4(4), "Longevity," amendments implement the provisions of H.B. 94. The passage of this bill places longevity employees on the same pay plan with all career service employees greatly simplifying the administration of the longevity program. As a result, the Department of Human Resource Management (DHRM) is able to eliminate two paragraphs of rules. In Subsection R477-7-4(10), "Productivity Step Adjustment," added language makes it clear that a position must remain vacant for one year before employees who assumed extra duties from that position can be recognized with a salary increase. In Subsection R477-7-4(11)(e), "Administrative Salary Increase," added language makes it clear that salary increases can be given during the probationary period but that this alone does not constitute successful completion of

probation or the granting of career service status. This is an important clarification for employees in probationary periods longer than six months. In Section R477-7-5, "Incentive Awards," added language in Subsection R477-7-5(2) creates parameters for the establishment of non-cash incentive award programs in agencies. DHRM and the Division of Finance worked together at the request of agencies to allow this option without creating serious tax liabilities for the state. (DAR Note: H.B. 94 is found at 1998 Utah Laws 44, and was effective May 4, 1998.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 67-19-6 and 67-19-15.6, and Subsection 67-19-8(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The funding to implement H.B. 94 is provided by the legislature in H.B. 3, "Supplemental Appropriations Act II, Item 60A." There is an anticipated one time cost of \$637,000.

(DAR Note: H.B. 3 is found at 1998 Utah Laws 373, and was effective March 24, 1998.)

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not affect anyone outside state government.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Resource Management
Administration
2120 State Office Building
PO Box 141531
Salt Lake City, UT 84114-1531, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/17/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/27/98

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

**R477. Human Resource Management, Administration.
R477-7. Compensation.**

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R477-7-2. Allocation to the Pay Plans.

(1) Each job [class] shall be assigned to a salary range on the applicable pay plan, except where compensation is established by statute.

(2) Salary range determination for benchmark jobs shall be based on salary survey data. The salary ranges for other jobs are determined by relative ranking with the appropriate benchmark job [classes].

R477-7-3. Appointments.

(1) All appointments shall be placed on a salary step in the DHRM approved salary range for the job [class]. Hiring officials shall receive approval from their agency head or agency human resource designee before making appointment offers to individuals.

(2) Re-employed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, and any cost of living allowances, reclassification of the veteran's pre-service position, or market comparability adjustments that would have affected the veteran's pre-service position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

R477-7-4. Salary.

(1) Merit increases - The following are applicable if merits are authorized and funded by the legislature:

(a) Employees who receive a successful or higher rating on their performance evaluations and who have been in a paid status by the state for at least six months shall receive a maximum merit increase of one salary step on the first pay period in July.

(b) Employees designated as schedule AJ are not eligible for a salary step increase. Merit increases for employees in schedule AL, AM, or AS are not mandatory unless they are receiving benefits, and the increase is approved in agency policy.

(2) Highest Level Performer

(a) Employees designated by the agency as a highest level performer consistent with subsection R477-10(2) shall receive, as determined by the agency head, either:

- (i) a salary step increase, or;
- (ii) a bonus; or
- (iii) administrative leave; or
- (iv) other appropriate recognition as determined by the agency.

(b) Employees [~~currently~~] on a longevity step [~~shall only be~~] are not eligible for a salary step increase but may receive a bonus, administrative leave or other appropriate recognition as determined by the agency.

(3) Promotions and Reclassifications

(a) Employees promoted or reclassified to a position with a salary range exceeding the employee's current salary range maximum by two or three salary steps shall receive a salary increase of a minimum of one salary step and a maximum of four salary steps. Employees who are promoted or reclassified to a position with a salary range exceeding the employee's current salary range maximum by four salary steps or more shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps. Employees may not be placed higher than the highest salary step or lower than the beginning salary step in the new salary range [~~unless they are in a longevity status in which case rule R477-7-4(4)(c) is applicable~~].

(b) To be eligible for a promotion, an employee shall:

(i) meet the job requirements/skills specified in the [~~classification specification or job standard~~] job description and

position specific criteria as determined by the agency for the position unless the promotion is to a career service exempt position;

(ii) have received a successful or higher performance rating within the 12 month period preceding the promotion;

(iii) not be currently in a period of constant review;

(iv) have successfully completed a period of constant review during the past twelve months, if applicable.

(c) Employees who have their positions reclassified to a job [~~class~~] with a lower salary range shall retain their current salary unless this salary exceeds the maximum of the new salary range. In this case, longevity rule R477-7-4(d) is in effect.

(4) Longevity

(a) An employee shall receive a longevity increase of [~~3.5~~] 2.75 percent when:

(i) They have been in state service for eight years or more. They may accrue years of service in more than one agency, and such service is not required to be continuous.

(ii) They have been at the maximum salary step in the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12 month period preceding the longevity increase.

(b) Employees on a longevity step shall be eligible for the same across-the-board pay plan adjustments authorized for all other employee pay plans.

(c) Employees on a longevity step shall only be eligible for additional [~~longevity~~] step increases every [~~five~~] three years. To be eligible, employees must receive a performance appraisal rating of successful or higher within the 12 month period preceding the longevity increase.

(d) Employees on a longevity step who are involuntarily reassigned or reclassified to a lower salary range, shall retain their salary, [~~if it equals a salary step on the lower salary range. If the current salary is not equal, the employee shall receive one of the following salary adjustments:~~

— (i) ~~To the next higher salary step on the designated salary range for those employees whose salary is below the maximum salary step of the new salary range;~~

— (ii) ~~To the next higher longevity step for employees whose salary is above the maximum salary step or between longevity steps of the new salary range.]~~

(e) Employees on a longevity step who are promoted or reclassified to a higher salary range shall [~~receive the same procedural consideration as employees not on a longevity step who are promoted or reclassified to a class having a higher salary range, except the adjustment from the longevity pay plan to the regular pay plan shall count as one step of the regular pay plan. If the promotion or reclassification leaves an employee in longevity at the new salary range, the salary shall be adjusted to the next step on the new longevity range~~] only receive an increase if their current salary step is less than the highest salary step of their new range.

(f) Agency heads or time-limited exempt employees identified in R477-5-12 are not eligible for the longevity program.

(5) Administrative Adjustment

(a) Employees who have had their position allocated by DHRM from one job [~~class~~] to another job [~~class~~] or salary range for administrative purposes, shall not receive an adjustment in salary.

(6) Voluntary Reassignment

(a) Employees who voluntarily accept a position with a salary range maximum two or three salary steps lower than their current position shall be placed at the salary step within the new salary range corresponding to a salary decrease of at least one salary step.

(b) Employees who voluntarily accept a position with a salary range maximum four salary steps or more lower than their current [position]salary range, shall be placed at the salary step within the new salary range corresponding to a salary decrease of at least two salary steps.

(c) Employees who voluntarily accept a position in a lower salary range, shall not receive a new salary lower than the lowest salary step, or higher than the highest salary step of the new salary range.

(7) Transfer

(a) Employees who transfer from one position to another position with the same salary range may not be offered salary increases effective the same date as the transfer.

(8) Demotions

Employees demoted consistent with R477-11-2 shall receive a salary reduction of one or more salary steps as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the salary reduction.

(9) Payroll actions

Payroll actions shall be effective on the first day of a payroll period closest to the salary action, with the exception of new hires, rehires, and terminations.

(10) Productivity step adjustment

Agency management may establish policies to reward employees who assume additional workloads that eliminate a position for at least one year with a salary increase of up to four salary steps. Employees at the top salary step of their salary range or in longevity shall be given a one time lump sum bonus award of 2.75% of their annual salary.

(a) To implement this program, agencies shall apply the following criteria:

(i) Either the employees or management can make the suggestion;

(ii) Employees and management agree;

(iii) The agency head approves;

(iv) A written program policy achieves increased productivity through labor/management collaboration;

(v) The agency human resource representative approves;

(vi) The position will be abolished from the position authorization plan for a minimum of one year;

(vii) Staff receives additional duties which are substantially above a normal full workload;

(viii) The same or higher level of service or productivity is achieved without accruing additional overtime hours;

(ix) The total dollar increase, including benefits, awarded to the workgroup as a result of the additional salary steps does not exceed 50 percent of the savings generated by eliminating the position;

(11) Administrative Salary Increase

The executive director or commissioner authorizes and approves Administrative Salary increases under the following parameters:

(a) Employees shall receive one or more steps up to the maximum of their salary range.

(b) Administrative Salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be—

(i) In writing;

(ii) Approved by the executive director or commissioner;

(iii) Supported by issues such as: special agency conditions or problems, equity issues, or other unique situations or considerations in the agency.

(d) The executive director or commissioner is the final authority for salary actions authorized within these guidelines. The executive director or commissioner or designee shall answer any challenge or grievance resulting from an Administrative Salary Increase.

(e) Administrative salary increases may be given during the probationary period. These increases alone do not constitute successful completion of probation or the granting of career service status.

(12) Administrative Salary Decrease

The executive director or commissioner authorizes and approves administrative salary decreases for non-disciplinary reasons according to the following:

(a) Employees shall receive a one or more step decrease not to exceed the minimum of their salary range.

(b) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the executive director or commissioner;

(iii) supported by issues such as; previous written agreements between the agency and employees to include career mobility; reasonable accommodation, special agency conditions or problems, equity issues, or other unique situations or considerations in the agency.

(c) The executive director or commissioner is the final authority for salary actions within these guidelines. The executive director or commissioner or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

R477-7-5. Incentive Awards.

Only agencies with a written and published incentive award policy approved by DHRM may reward employees with cash incentive awards, non-cash incentive awards and bonuses. Policies shall be consistent with standards established in these rules and with DAS Division of Finance rules and procedures.

(1) Agencies may reward employees or groups of employees who propose workable cost saving measures and other worthy acts with [an]a cash incentive award[up to a maximum of \$2,000 for each event. Individual incentive rewards shall not exceed \$4,000 for each fiscal year].

(a) [~~Only agencies with a developed written incentive award policy approved by DHRM may pay employees incentive awards or bonuses. Individual awards shall not exceed \$2,000 per occurrence and \$4,000 in a fiscal year.~~

(b) [~~Suggestions or acts worth~~]Awards of \$100 or more must be documented, evaluated, and approved by the agency. A copy shall also be maintained in the agency's individual employee file. These incentive awards are subject to post audit by DHRM.

[~~(c) All incentive awards must be processed consistent with DAS Division of Finance procedures.~~]

(2) Non-Cash Incentive Awards

Agency heads may recognize employees or groups of employees with non-cash incentive awards.

(a) Individual non-cash incentive awards shall not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(b) Non-cash incentive awards may not include cash equivalents such as gift certificates or tickets for admission.

[2]3) Bonus Awards

Agency heads may authorize bonus awards for individual or group productivity accomplishments. Each award shall not exceed \$2,000. Awards are subject to post audit by DHRM.

R477-7-6. Employee Benefits.

(1) Agencies shall explain all benefits provided by the state to new hires or rehires within five working days of the hire date.

(2) Agency payroll or human resource staff shall submit personnel action forms to the appropriate agency levels within ten days of hire date.

(3) Employees must elect to enroll in the life, health and dental plans within 60 days of the hire date to avoid having to provide proof of insurability. Agencies shall submit the enrollment forms to Group insurance within three days of the date entered on the enrollment card.

(4) Flex Benefits

(a) The annual open enrollment period will be held each November for the following FLEX plan year. Exceptions to this rule are as follows:

(i) New employees wishing to participate in the FLEX benefits program shall enroll within the first 60 days of their employment. Coverage becomes effective on their employment date.

(ii) Employees who have a change in family status, such as marriage, divorce, or birth of a child, may enroll within 60 days of such event. Proper documentation, such as marriage license, divorce decree, or birth certificate, plus a completed FLEX ~~[benefits application]~~[family status change form] must be received by the ~~[DHRM Benefits Office]~~[PEHP FLEX Plan Department] within 60 days of the change in family status.

(b) Employees must re-enroll each year to participate in the FLEX benefits program.

(c) An employee's designated FLEX payroll deduction shall not be changed during the course of a year unless there is a change in family status.

(d) To be eligible for reimbursement, employees must submit eligible FLEX claims accompanied by documentation to the DHRM Benefits Office no later than the first Thursday of each pay period.

(e) The claim submission deadline for any plan year shall be ~~[March of the]~~90 days following the end of the calendar year. To be eligible for reimbursement, the FLEX claim must be received at the ~~[DHRM Benefits Office]~~[PEHP FLEX Plan Department] by close of business on the established plan year deadline.

(5) Employees working less than 40 hours per pay period are ineligible for benefits. Employees working 40 hours, except those identified in R477-5-12, or more per pay period shall be eligible for leave benefits on a pro-rated basis.

(6) Re-employed veterans under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

R477-7-7. Employees Converting from Career Service to Schedule AD, AR, or AS.

(1) Career service employees in positions meeting the criteria for career service exempt Schedule AD, AR, or AS shall have 60 days to elect to convert from career service to career service exempt. As an incentive to convert, employees shall be provided the following:

(a) a base salary increase of one (1) to three (3) salary steps, as determined by the agency head. Employees at the maximum of their current salary range or on longevity shall receive, in lieu of the salary step adjustment, a one time bonus of 2.75 percent, 5.5 percent or 8.25 percent to be determined by the agency head;

(b) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) Employees electing to convert to career service exempt after their 60 days election period shall not be eligible for the salary increase, but shall be entitled to ~~[receive the severance package and]~~ apply for the insurance coverage through the Group Insurance Office.

(3) Employees electing not to convert to career service exemption shall retain career service even though their position shall be designated as Schedule AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, he shall not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) Career service exempt employees without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be done consistent with R477-5.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

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KEY: salaries, employee benefit plans*, insurance, personnel management

~~[August 15, 1997]~~June 27, 1998

67-19-6

Notice of Continuation July 1, 1997



Human Resource Management,
Administration
R477-8
Working Conditions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 21069
FILED: 05/01/98, 10:38
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: A variety of policies
are implemented or amended with this filing: establish an
obligation for employees to report to work on time regardless
of the reason including inclement weather, clarify the legal
obligation for an employee to use compensatory time, clarify
what constitutes "on-call" time, limit accumulation of excess
hours for executive directors, clarify policies on the use of
military and funeral leave and consolidate language,
implement the provisions of S.B. 138, "Retirement - Use of
Sick Leave," simplify the rule governing the use of leave in
conjunction with workers compensation benefits, implement
S.B. 137, "Disaster Service Volunteer Leave Act," and make
nonsubstantive amendments to coincide with the use of new
terms and changes to definitions.

SUMMARY: In Subsection R477-8-2(1)(e), "Work Period," new
language requires employees to make up time lost for
tardiness with the use of accrued leave or adjustments in
their work schedule regardless of the reason for the
tardiness. In Subsection R477-8-6(6), "Compensatory time,"
this removes an assumption that an employees must use
compensatory time within 30 days. The fixed requirement
time was legally unsound. The employee is still encouraged
to use the time as soon as possible. In Subsection R477-8-
6(8)(c), "On-call time," amendments to this paragraph make
clear what is meant by "on-call time". This also places an
obligation on the employee to report the time. In Section
R477-8-7, "Leave," Subsection R477-8-7(8), "Funeral leave,"
and Subsection R477-8-7(9), "Military Leave," amended
language clarifies the conditions of leave and consolidates
language into more logical arrangements. Added language
also makes it clear that funeral leave days and military leave
days are the equivalent of 8 hours even though the term days
is used in code. The allowance for flexible time schedules
has created confusion for employees who work 9 or 10 hour
days and then need to take a day of leave. In Subsection
R477-8-7(6), "Early Retirement Incentive," amendments to
this paragraph implement the provisions of S.B. 138,
"Retirement - Use of Sick Leave." The language adopted
results from a very strict and literal reading of the contents
of the bill. In Subsection R477-8-7(7), "Workers Compensation
Leave," new language is a simplification of the policy allowing
state employees to use accrued leave benefits to supplement
the Workers Compensation benefit. This paragraph was
crafted with the assistance of a team of human resource
professionals and technicians in state government. And in

Subsection R477-8-7(13), "Disaster Service Volunteer
Leave'," new language implements the provisions of S.B.
137, "Disaster Service Volunteer Leave Act."
(DAR Note: S.B. 137 is found at 1998 Utah Laws 186, and
was effective May 4, 1998. S.B. 138 is found at 1998 Utah
Laws 338, and will be effective July 1, 1998.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS
FILING: Sections 67-19-6, 67-19-6.7, and 67-19-14

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: The legislature requires agencies to
bear the cost of implementing the changes in the early
retirement program. This is estimated at \$304,800.
LOCAL GOVERNMENTS: None.
OTHER PERSONS: None.
COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does
not impact anyone outside state government.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING
REGULAR BUSINESS HOURS, AT:

Human Resource Management
Administration
2120 State Office Building
PO Box 141531
Salt Lake City, UT 84114-1531, or
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THIS FILING MAY BECOME EFFECTIVE ON: 06/27/98

AUTHORIZED BY: Conroy R. Whipple, Legislation and
Planning Coordinator

R477. Human Resource Management, Administration.
R477-8. Working Conditions.

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R477-8-2. Work Period.

- (1) Tasks shall be assigned and wages paid in return for work
completed. During the state's standard work week, each employee
is responsible for fulfilling the essential functions of his job.
(a) The state's standard work week begins Saturday and ends
the following Friday.
(b) State offices are typically open Monday through Friday
from 8 a.m. to 5 p.m. Agencies may adopt extended business hours
to enhance service to the public, consistent with overtime
provisions of the rules R477-8-6.

(c) Employees may negotiate for flexible starting and quitting times with their immediate supervisor as long as scheduling is consistent with overtime provisions of the rules R477-8-6.

(d) Agencies may implement alternative work schedules approved by the Director.

(e) Employees are required to be at work on time. Employees who are late regardless of the reason, including inclement weather, shall make up the lost time by using accrued leave, leave without pay or, with management approval, adjust their work schedule.

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R477-8-6. Overtime.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899, 1991 edition.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

- (a) Prior supervisory approval for all overtime worked;
- (b) Recordkeeping guidelines for all overtime worked;
- (c) Verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each [class]job title in [the Job Class Code Book]HRE as either FLSA non-exempt, or FLSA exempt.

(a) Employees may appeal their FLSA designation to their agency human resource office and DHRM concurrently. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. The provisions of Sections 67-19-31 and 67-19a-301 and Title 63, Chapter 46b shall not apply for FLSA appeals purposes.

(3) FLSA non-exempt employees shall be eligible for overtime when they actually work more than 40 hours a week. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime accruing. Hours worked over two or more weeks shall not be averaged out with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) Non-exempt employees shall sign a prior agreement authorizing management to compensate them for overtime worked by actual payment or time off at time and one-half.

(b) Non-exempt employees may receive compensatory time for overtime, up to a maximum of 80 hours. Only with prior approval of the Executive Director, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace/correctional officers, emergency or seasonal employees. Once employees reach the maximum, they shall be paid for additional overtime on the pay day for the period in which it was earned.

(4) FLSA exempt employees shall be eligible for overtime when they actually work more than 80 hours in a work period. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime. Each agency shall compensate FLSA exempt employees who work overtime by giving them time off. For each hour of overtime worked, an employee shall receive an hour off. Compensatory hours earned in excess of a base of 80 shall be paid down to 80.

(a) Agencies shall establish in written policy a uniform overtime year and communicate it to employees. If an agency fails to establish a uniform overtime year, the Executive Director and the Director of Finance, Department of Administrative Services, will determine the date for the agency at the end of one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year.

(b) Any overtime earned by FLSA exempt employees is not an entitlement, a benefit, nor a vested right.

(c) Any overtime earned by FLSA exempt employees shall lapse at the end of an agency's annual overtime year.

(d) Any compensatory overtime earned by FLSA exempt employees shall lapse when they transfer to another agency, terminate, retire or otherwise do not return to work before the end of the overtime year.

(e) The agency director may approve overtime for division and deputy directors, but overtime shall not be compensated with actual payment.

(5) Law enforcement/correctional officers

(a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer must meet the following criteria:

- (i) be a uniformed or plainclothes sworn officer;
- (ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes; and
- (iii) have the power to arrest.

(b) Law enforcement or correctional officers designated FLSA non-exempt and covered under this rule shall accrue overtime when they work more than 171 hours in 28 consecutive days. An agency may select a work period of 86 hours within a 14-day period for law enforcement employees, but all changes shall conform to the following:

- (i) The Fair Labor Standards Act, Section 207(k);
- (ii) The State's payroll period;
- (iii) The approval of the Executive Director.

(c) Fire protection employees shall accrue overtime when they work more than 212 hours in 28 consecutive days.

(d) The work period selection becomes permanent when scheduled and may not be changed to evade overtime compensation rules.

(6) Compensatory Time

(a) Employees and agency management shall arrange for use of compensatory time as soon as possible[~~Management shall encourage employees to use accrued compensatory time within 30 days following the pay period in which it was accrued, as long as taking compensatory time off does not~~] without unduly disrupting agency operations or endanger public health, safety or property.

(b) Compensatory time balances are paid down to zero when employees transfer from one agency to a different agency.

(7) Time Reporting

(a) FLSA non-exempt employees must complete and sign a State approved biweekly time sheet. Time sheets developed by the agency shall have the same elements of the State approved time sheet and be approved by the Department of Administrative Services, Division of Finance.

(b) FLSA exempt employees who work more than 80 hours in a work period must record their total hours worked, and/or the

compensatory time used on their biweekly time sheet. All hours must be recorded in order to claim overtime. Completion of the time sheet is at agency discretion when no overtime is worked during the work period.

(8) Hours Worked

FLSA non-exempt employees shall be compensated for all hours they are permitted to work. Hours worked shall be accounted for as long as the state permits employees to work on its behalf, regardless of the reason for the work. Employees who work unauthorized overtime may be subject to disciplinary actions.

(a) All time that FLSA non-exempt employees are required to wait for an assignment while on duty, before reporting to duty, or before performing their activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) The employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) The employee is completely relieved from duty and allowed to leave the job;

(iii) The employee is relieved until a definite specified time;

(iv) The relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: Employees required by agency management to be available for on-call work shall be compensated for on-call time at a rate of 1 hour for every 12 hours the employee is on-call.

(i) Time is considered "on-call time" when the employee has freedom of movement in personal matters as long as he/she is available for call to duty.

(ii) An employee must be directed by his supervisor, either verbally or in writing, that he is on call for a specified time period. Carrying a beeper or cell phone shall not constitute on call time without a specific directive from a supervisor.

(iii) [Employees record on-call time as "on-call paid" not as "hours worked" on their time sheet, and shall be paid the following pay period. Any time actually worked during the on-call period is recorded in increments of 15 minutes as "hours worked" in addition to on-call time.] The employee shall record the hours spent in on call status on his time sheet in order to be paid.

(d) Stand-by time: Employees restricted to "stand-by" at a specified location ready for work must be paid full time or overtime, as appropriate. Workers must be paid for stand-by time if they are required to stand by their posts ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours must be counted as working time, unless an express agreement excludes the time.

(f) Commuting and Travel Time:

(i) Normal commuting time from home to work and back shall not count towards hours worked.

(ii) Time employees spend traveling from one job site to another during the normal work schedule shall count towards hours worked.

(iii) Time employees spend traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(iv) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(g) Excess Hours: Employees may use excess hours the same way as annual leave [or agency management may pay the hours out ~~under one of the following:~~

~~(i) Paid off automatically in the same pay period accrued;~~

~~(ii) All hours accrued after 40 hours are paid off;~~

~~(iii) All hours accrued after 80 hours are paid off].~~

(i) Employees on schedule AB may not accumulate more than 80 excess hours.

(ii) Agency management may pay out excess hours under one of the following:

(A) Paid off automatically in the same pay period accrued;

(B) All hours accrued after 40 hours are paid off;

(C) All hours accrued after 80 hours are paid off.

(D) Employees on schedule AB shall only be paid for excess hours at retirement or termination.

R477-8-7. Leave.

All employees who regularly work 40 hours or more per pay period, except Schedule AJ or other temporary workers, are eligible for leave benefits. Employees receive leave benefits in proportion to the number of hours they are scheduled to work. [~~One day of leave benefit is the equivalent of 8 hours.~~] Employees shall use leave in no less than quarter hour increments.

(1) Holiday Leave

(a) The following dates are designated legal holidays:

(i) New Years Day -- January 1

(ii) Human Rights Day -- third Monday of January

(iii) Presidents' Day -- third Monday of February

(iv) Memorial Day -- last Monday of May

(v) Independence Day -- July 4

(vi) Pioneer Day -- July 24

(vii) Labor Day -- first Monday of September

(viii) Columbus Day -- second Monday of October

(ix) Veterans' Day -- November 11

(x) Thanksgiving Day -- fourth Thursday of November

(xi) Christmas Day -- December 25

(xii) The Governor may also designate any other day a legal holiday.

(b) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(c) If an employee is required to work on an observed holiday, the employee shall receive [~~another day off~~] appropriate holiday leave, or shall receive compensation for the excess hours worked.

(d) The following employees are eligible to receive holiday leave:

(i) Full-time employees shall accrue eight hours of paid holiday leave on holidays;

(ii) Part-time career service employees and partners in a job-shared position who work 40 hours or more per pay period shall receive holiday leave in proportion to the hours they normally work in a pay period;

(iii) Employees working flex-time, as defined in R477-8-2, shall receive a maximum of 88 hours of holiday leave in each calendar year. If the holiday falls on a regularly scheduled day off,

flex-time employees shall receive an equivalent work day off, not to exceed eight hours or shall receive compensation for the excess hours at a later date.

(e) In order to receive paid holiday leave, an employee must be in a paid status for a full scheduled work day before and after a holiday.

(2) Conditions of leave

(a) ~~[Part-time]~~Eligible employees who work ~~[more than]~~40 or more hours per pay period shall accrue annual and sick leave in proportion to the time worked. They shall also receive funeral, holiday, and paid military leave in proportion to the time worked. Employees excluded from these are "at will" employees identified in R477-5-12.

(b) Seasonal, temporary, or part-time employees working less than 40 hours per pay period are not eligible for paid leave.

~~(c) [Eligible employees working a regular schedule of less than full-time shall accrue a proportional amount of annual, sick and holiday leave:~~

~~(d) [Accrual R]rates for sick and annual leave are [accrued]determined in proportion to the time worked, as outlined on the Annual and Sick Leave Accrual table available through DHRM.~~

~~(e)d~~ No employee may receive annual, sick or holiday leave before he has accrued it.

~~(f)e~~ Employees transferring from one agency of State service to another are entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

~~(g)f~~ Employees on paid leave shall continue to accrue annual and sick leave.

~~(g) Employees terminating or retiring from State service shall be cashed out in a lump sum for all annual leave and converted sick leave effective through the last day actually worked. Leave cannot be accrued after the last day worked. No leave-on-leave may accrue or be paid on the cashed out annual leave.~~

~~(h) No contributions to benefits may be paid on cashed out leave, other than FICA tax, except as it applies to the Early Retirement Incentive Program outlined in R477-8-(7)-(5)(b).~~

(3) Annual Leave

(a) Employees eligible for annual leave shall accrue leave based on the following years of State service:

(i) Zero through five years -- four hours per pay period.

(ii) Beginning of sixth year through ten years -- five hours per pay period.

(iii) Beginning of eleventh year or more -- six hours per pay period.

(b) To determine the accrual rate, all State employment shall be counted in which an employee was eligible to accrue leave regardless of whether the employment was continuous or not.

(c) Eligible employees may begin to use annual leave time after completing the equivalent of two full pay periods of employment.

(d) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year. However, annual leave granted shall be approved in advance by management.

(e) Any unused accrued annual leave time in excess of 320 hours shall be forfeited at the beginning of the first full pay period of each calendar year.

(f) Department deputy directors and division directors appointed to career service exempt status positions shall be eligible for the maximum annual leave accrual rate upon their date of hire but shall not be eligible for any transfer of leave from other jurisdictions. Annual leave shall accrue at six hours per pay period for the tenure of employment in exempt positions. Other provisions of leave shall apply as defined in R477-8-7(3).

~~[(g) Employees terminating or retiring from State service shall be cashed out in a lump sum for all annual leave accrued through the last day actually worked. No leave-on-leave may accrue or be paid, nor shall contributions to benefits, other than FICA tax, be paid on the cashed out annual leave.]~~

(4) Sick Leave

(a) Employees shall accrue sick leave with pay at the rate of four hours each pay period. Sick leave shall accrue without limit.

(b) Employees may begin to use accrued sick leave after completing the equivalent of at least two full pay periods of employment.

(c) Sick leave shall be granted for preventive health and dental care, maternity/paternity and adoption care, or for absence from duty because of illness, injury or temporary disability of a spouse or dependents living in the employee's home. Exceptions may be granted for other unique medical situations.

(d) Employees shall arrange for a telephone report to supervisors at the beginning of the scheduled work day they are absent because of illness or injury. Management may require reports for serious illnesses or injuries.

(e) Any application for a grant of sick leave to cover an absence which exceeds four successive working days shall be supported by administratively acceptable evidence such as a medical certificate. If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce a doctor's certificate of illness regardless of the number of days on sick leave.

(f) Any absence for illness beyond the accrued sick leave credit may continue under the following provisions: an approved leave-without-pay status, not to exceed 12 months, an approved Family Medical Leave Status, or in an annual or other accrued leave status.

(g) After filing a termination notice, employees must support sick leave requests with a doctor's certificate.

(h) Employees separating from State service may not receive compensation for accrued unused sick leave unless they are retiring. However, employees who are rehired within 12 months of separation to a position which receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

~~(i) [Employees terminating or retiring from State service shall be cashed out in a lump sum for all annual leave and converted sick leave effective through the last day actually worked. Leave cannot be accrued after the last day worked.]~~Employees who are rehired within 12 months of separation to a position which receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

~~(ii) [No contributions to benefits may be paid on cashed out leave, other than FICA tax, except as it applies to the Early Retirement Incentive Program outlined in R477-8-(7)-(5)(b)]~~Employees who retire from state service and are then rehired may not reinstate their unused sick leave credit.

(5) Converted Sick Leave

As an incentive to reduce sick leave abuse, employees may convert a portion of unused sick leave to converted sick leave.

(a) To be eligible for converted sick leave, an employee must have an accumulated balance of 144 hours of unused sick leave at the end of the last pay period of the calendar year.

(i) ~~[Any hours earned in excess of 64 in the next]~~ Forty hours are eligible for conversion in a calendar year and will be converted to converted sick leave unless the employee designates otherwise.

(ii) ~~[The maximum number of sick hours that employees may convert in a calendar year is 40]~~ The number of hours used in a calendar year shall be deducted from the 40 hours eligible for conversion.

(iii) The maximum hours of converted sick leave an employee may accrue is 320.

(b) Converted sick leave may be used as annual leave, regular sick leave, or as paid-up health and life insurance at the time of retirement for employees under age 65. If an employee is 65 years of age or older at the time of retirement, converted sick leave may be used to purchase a medicare supplement.

(i) Payment for health and life insurance is the responsibility of the employing agency.

(ii) Eight hours of converted sick leave equals the amount of the premium for one month's coverage for health and life insurance.

(6) Early Retirement incentive

Employees may be offered an early retirement incentive program, according to Section 67-19-14(2).

(a) This program is optional for each department. However, any decision whether or not to participate shall be agency-wide and shall be consistent through an entire fiscal year.

(b) If an agency decides to withdraw for the next fiscal year after initially deciding to participate in early retirement, the agency must notify all employees at least 60 days before the new fiscal year begins.

~~—(c) The early retirement incentive shall consist of:~~

~~—(i) Retiring employees shall receive a cash payment of 25 percent for their accrued unused sick leave at their current rate of pay, including retiring employees age 65 and over.~~

~~—(ii) The employing department shall provide health and life insurance coverage for five years or until the age when full social security benefits can be received, whichever comes first.~~

~~—(iii) Employees under age 60 may retire if otherwise eligible, but health and life insurance coverage will end after five years, unless the employee has sick leave in excess of 60 days after the 25 percent cash out. Each sick leave day in excess of 60 days after the 25 percent cash out shall provide one additional month of paid health and life insurance coverage up to age 65.~~

~~—(iv) Converted sick leave may be used to purchase additional months of health and life insurance coverage up to age 65. If an employee is 65 years of age or older at the time of retirement, converted sick leave may be used to purchase a medicare supplement:~~

~~—(v) Health coverage shall be the same as currently carried by the employee, i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided. Life insurance provided shall be the basic \$18,000 coverage provided for all State employees.]~~

(c) Employee participation in any part of this incentive program shall be voluntary, but the decision to participate shall be made at retirement.

(d) The early retirement incentive for employees who retire prior to age 60, shall consist of any or all of the following:

(i) An option to receive a cash payment of 25 percent for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the Utah State Retirement Board.

(ii) The employing department shall provide health and life insurance coverage for five years.

(A) Health coverage shall be the same as carried by the employee at the time of retirement, i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(B) Life insurance provided shall be the basic \$18,000 coverage provided for all State employees.

(C) Health and life insurance coverage will end after five years, unless the employee has sick leave in excess of 480 hours after any cash out. Eight hours of sick leave in excess of 480 after any cash out shall provide one additional month of paid health and life insurance coverage up to the age eligible for medicare.

(iv) When the employee becomes eligible for medicare, the purchase of health and life insurance coverage for a spouse until the spouse is eligible for medicare at the rate of one month of coverage for 8 hours of unused sick leave after any cash out and the 480 hour deduction.

(v) The purchase of low option medicare supplement for the employee and a spouse at the rate of one month of coverage for 8 hours of unused sick leave for the employee and one month of coverage for 8 hours of unused sick leave for the spouse.

(e) The early retirement incentive for employees who retire after age 60 but prior to becoming eligible for medicare shall consist of:

(i) An option to receive a cash payment of 25 percent for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the Utah State Retirement Board.

(ii) The employing department shall provide health and life insurance coverage for five years or until the age when the employee is eligible for medicare, whichever comes first.

(A) Health coverage shall be the same as currently carried by the employee, i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(B) Life insurance provided shall be the basic \$18,000 coverage provided for all state employees.

(f) Employees who retire and are eligible for medicare may receive a cash payment for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the Utah State Retirement Board.

(7) Workers Compensation Leave

~~[—Workers Compensation Insurance has been purchased for employees and approved volunteers under the provisions of sections 35-1-46 and 35-1-49. The workers compensation time loss benefits are fixed at two thirds of the employee's gross salary or 100% of the state average salary, whichever is less. No benefit is paid for the~~

first three days following an injury unless the employee is absent for fourteen calendar days following the injury.

~~— (a) An employee may use sick leave until the workers compensation payments begin to arrive under the provisions of R477-8-7(4). All sick leave used shall be purchased back by the employee at the workers compensation rate with the following exceptions:~~

~~— (i) sick leave which is used to make up the difference between the actual benefit received and two thirds of the employee's gross salary;~~

~~— (ii) sick leave which is used in the first three days following the injury unless compensation is not received from the fund.~~

~~— (b) An employee may use annual leave or converted sick leave to supplement the workers compensation benefit under the provisions of R477-8-7(3):~~

~~— (c) An employee who may return to work within fourteen or fewer days will not receive a workers compensation time loss benefit for the first three days but shall have the following options:~~

~~— (i) Use leave without pay and retain all workers compensation checks; or~~

~~— (ii) Use sick leave for the first three days and retain all workers compensation benefits.~~

~~— (d) An employee who is on workers compensation for longer than fourteen days will receive a workers compensation time loss benefit for the first three days and shall have the following options:~~

~~— (i) Use leave without pay and retain all workers compensation checks; or~~

~~— (ii) Use annual leave and converted sick leave and retain all workers compensation payments.~~

~~— (iii) If there are indications that the disability will last longer than three months, the employee may also apply for Long Term Disability and Social Security disability. At that time, Long Term Disability will be coordinated with Workers Compensation and Social Security, if eligible, and the use of additional sick leave will be discontinued.~~

~~— (e) An employee who is receiving a workers compensation time loss benefit shall receive all employee benefits, except holiday leave, at the employer's expense at the current rate and contribution for up to one year from the last day worked. The agency shall contact Retirement Group Insurance and the Department of Administrative Services, Division of Finance to arrange continued payment of benefits premiums.~~

~~— (f) Employees in an approved leave status who are covered by workers compensation and who are medically able to return to work within one year from the last day worked or a specified time period, shall be entitled to:~~

~~— (i) return to work in their previously held position or a position with a comparable or lower salary range; or~~

~~— (ii) receive assistance from the employing agency for up to an additional year to find a position with similar or less pay to the previously held position.~~

~~— (g) An agency executive director may extend time lines for return to work into a comparable or lower salary range beyond one year if injury resulted in disability prohibiting the employee from performing the essential functions of the job, as defined by the ADA. Assistance shall be given to find a position with similar or less pay to that previously held position. The state shall require medical evidence upon which to make a judgement.~~

~~— (h) Before an agency makes a termination decision, the employee must be informed of his rights to reasonable accommodation and if requested, the employee must receive an individualized assessment determining current employability and reasonable accommodation.~~

~~— (i) Agencies shall develop return to work and temporary transitional duty procedures in accordance with the Division of Risk Management, Utah Administrative Code R37-1-8.:~~

~~(a) An employee may use accrued leave benefits to supplement the workers compensation benefit.~~

~~(i) The combination of leave benefit and workers compensation benefit shall not exceed the employees gross salary.~~

~~(ii) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:~~

~~(A) the employee is declared medically stable by licensed medical authority; or~~

~~(B) the workers compensation fund terminates the benefit; or~~

~~(C) the employee has been absent from work for one year; or~~

~~(D) the employee refuses to accept appropriate employment offered by the state; or~~

~~(E) the employee receives Long Term Disability or Social Security Disability benefits.~~

~~(iii) The employee shall refund to the state any accrued leave paid which exceeds the employees gross salary for the period for which the benefit was received.~~

~~(b) Employees will continue to accrue state paid benefits while receiving a workers compensation time loss benefit for up to one year.~~

~~(c) Employees who file fraudulent workers compensation claims shall be disciplined according to the provisions of R477-11.~~

~~(8) Funeral Leave~~

~~Employees may receive a maximum of three days funeral leave per occurrence with pay at management's discretion to attend the funeral of a member of the immediate family. Funeral leave may not be charged against accrued sick or annual leave. One day of funeral is the equivalent of 8 hours.~~

~~(a) The "immediate family" means-- wife, husband, children, daughter-in-law, son-in-law, parents, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, spouse's grandparents, step-children, and step-parents, brothers and sisters of the employee.~~

~~(9) Military Leave~~

~~One day of military leave is the equivalent of 8 hours.~~

~~(a) Employees who are members of the National Guard or Military Reserves are entitled to military leave not to exceed fifteen [regularly-scheduled working]days[;] per year without loss of pay, annual leave or sick leave. Employees shall be on official military orders and may not claim salary for non-working days spent in military training or for traditional weekend training.~~

~~(b) Officers and employees of the state shall be granted military leave without pay for the period of active service or duty, including travel time, Section 39-3-1.~~

~~(c) Employees are required to give notice of active military service as soon as they are notified.~~

~~(d) Upon termination from active military service, under honorable conditions, employees shall be placed in their original position or one of like seniority, status and pay. The cumulative length of time allowed for re-employment may not exceed five years. Employees are entitled to re-employment rights and benefits~~

including increased pension and leave accrual. Persons entering military leave may elect to have payment for annual leave deferred. In order to be reemployed, employees shall present evidence of military service and leave without pay status, and:

(i) For service less than thirty-one days, return at the beginning of the next regularly scheduled work period on the first full day after release from service taking into account safe travel home plus an eight-hour rest period, or:

(ii) For service of more than thirty-one days but less than 181 days, submit an application for reemployment within fourteen days of release from service, or

(iii) For service of more than 180 days, submit an application for reemployment within ninety days of release from service.

(10) Leave of Absence Without Pay

Employees may be granted continuous leave of absence without pay for up to 12 months. Employees shall apply in writing to agency management for approval. If absence is due to FMLA, workers compensation or long-term disability, R477-8-9 or R477-8-7(7) applies.

(a) Medical leave without pay may be granted for no more than twelve months. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled.

(b) Agency management may approve leave without pay for employees even though annual or sick leave balances exist. Employees may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.

(i) Employees who receive no compensation for a complete pay period shall be responsible for payment of state provided benefit premiums, unless they are covered by the provisions under the federal Family and Medical Leave Act, in R477-8-9.

(c) Employees who return to work on or before the expiration of leave without pay, shall be placed in a position with comparable pay and seniority to their previously held position, provided the same or comparable level of duties can be performed with or without reasonable accommodation. The employee shall also be entitled to previously accrued annual and sick leave.

(d) Leave without pay for non-disability reasons may be granted only when there is an expectation that the employee will return to work.

(e) Health insurance benefits shall continue for employees on leave without pay because of work-related injuries or illnesses. Except as provided under the family and medical leave provisions, employees on leave without pay must personally continue the premiums to receive health insurance benefits.

(f) Employees who are determined eligible for the Long Term Disability Program (LTD) shall be granted up to one year of medical leave, if warranted by a medical condition.

(i) The one year medical leave begins on the last day the employee worked due to the disability. During this period and until LTD benefits begin, employees shall use sick and converted sick leave. Annual leave may be used after the employee uses all available sick and converted sick leave.

(ii) If the employee is unable to return to work and has not used all available annual leave, he shall be paid for the annual leave when the termination action is processed.

(iii) Employees determined eligible for Long Term Disability benefits, after a three month waiting period, will be eligible for health insurance benefits beginning two months after the last day

worked. The health insurance benefit will continue for up to twenty-two months or until they are eligible for medicare/ medicaid, whichever occurs first.

(iv) Conditions for return from leave without pay shall include:

(A) If an employee is able to return to normal duties within one year of the last day worked, the agency shall place the employee in his previously held position or similar position in a comparable salary range.

(B) If an employee is unable to perform the essential functions of the job because of a permanent disability, the obligation to place the employee in the same position shall be set aside. The employing unit shall place the employee in the best available, vacant position for which he is qualified, if able to perform the job with or without reasonable accommodation. If the employing unit does not have an available position, the agency shall then attempt to place the individual. The new position shall be consistent with the employee's qualifications and capabilities.

(I) For the first year, every effort shall be made to find a position as close to the salary range and function as the original position.

(II) The agency Executive Director may extend the timeline for return to work beyond one year if the employee's injury resulted in disability prohibiting the employee from performing the essential functions of the job, as defined by ADA.

(11) Jury Leave

(a) Employees are entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, they are required to:

(i) Appear as a witness as part of their position for the federal government, the State of Utah, or a political subdivision of the state, or

(ii) Serve as a witness in a grievance hearing.

(iii) Serve on a jury

(b) Employees choosing to use annual leave while on jury duty shall be entitled to keep jurors fees; otherwise, jurors fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the low org. where the salary is recorded.

(c) Employees who are absent in order to litigate in matters unrelated to their position shall take leave as annual or as leave without pay.

(12) Administrative Leave

(a) Administrative leave may be granted consistent with agency policy for the following reasons:

(i) corrective action;

(ii) personal decision-making prior to discipline;

(iii) suspension with pay-- during removal from job site-- pending hearing on charges;

(iv) during management decision situations that benefit the organization;

(v) incentive awards in lieu of cash;

(vi) when no work is available due to unavoidable conditions or influences;

(vii) removal from adverse or hostile work environment situations pending management corrective action;

(viii) educational assistance;

(ix) employee assistance and fitness for duty evaluations.

(b) Agency head or designee may grant paid administrative leave for no more than ten consecutive working days per occurrence. Other conditions of administrative leave are:

(i) Administrative leave in excess of 10 consecutive working days per occurrence may be granted by written approval of the agency head.

(ii) Administrative leave taken must be documented in the employee's leave record.

(13) Disaster Relief Volunteer Leave

(a) An employee may be granted an aggregate of 15 working days or 120 work hours in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer; and file a written request with the employing agency. The request shall include:

(i) a copy of a written request for the employee's services from an official of the American Red Cross;

(ii) the anticipated duration of the absence;

(iii) the type of service the employee is to provide for the American Red Cross; and

(iv) the nature and location of the disaster where the employee's services will be provided.

(1[3]4) Furlough

(a) Agency management may furlough employees as a means of saving salary costs in lieu of reduction in force. See R477-12-3(3). Furlough plans are subject to the approval of the Executive Director, DHRM and the following conditions:

(i) Employees accrue annual and sick leave.

(ii) Full payment of all fringe benefits continue at agency's expense.

(iii) Employees shall return to their positions.

(iv) Furlough is applied equitably, e.g., to all persons in a given class, all program staff, or all staff in an organization.

.....

KEY: compensatory time, disability insurance, leave, vacations
[August 15, 1997] June 27, 1998 67-19-6
Notice of Continuation July 1, 1997



**Human Resource Management,
Administration
R477-10
Employee Development**

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 21070
FILED: 05/01/98, 10:38
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To clarify supervisor expectations on performance management and corrective

action, and to increase reimbursement amount for education assistance to reflect increases in education costs.

SUMMARY: In Subsection R477-10-1(1), "Performance Evaluation," 'shall' language is added to clarify supervisors responsibility to write performance expectations and inform the employee of those expectations. In Subsection R477-10-2(1)(a)(iii), "Corrective Actions," the phrase "by an agency designee" is added to avoid possible conflicts with the Americans with Disabilities Act (ADA). Agencies may appoint the Human Resource office, Employee Assistance coordinator or another professional who understands the confidentiality requirements of the ADA when counseling employees. In Subsection R477-10-2(3), "Corrective Actions," new language is added which requires a supervisor to specify a time period for the corrective action. In Subsection R477-10-5(1)(d), "Education Assistance," the maximum allowed without agency head approval is increased from \$1,500 to \$2,500.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not affect anyone outside state government.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Resource Management
Administration
2120 State Office Building
PO Box 141531
Salt Lake City, UT 84114-1531, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/17/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/27/98

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.

R477-10. Employee Development.

R477-10-1. Performance Evaluation.

Agency management shall develop an employee performance management system consistent with these rules and subject to approval by the Executive Director, DHRM. The Executive Director, DHRM, may authorize exceptions to provisions of this

rule consistent with R477-2-3. For this rule, the word employee refers to career service employees, unless otherwise indicated.

(1) An acceptable performance management system shall satisfy the following criteria:

(a) Performance standards and expectations for each employee ~~are~~ shall be specifically written in a performance plan by August 30 of each fiscal year.

(b) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.

(c) Each employee ~~knows~~ shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.

(d) Each employee shall have the right to include written comment with his performance evaluation.

(e) Agency management shall select a performance management rating system or a combination of systems by August 30 to be effective for the entire fiscal year. The rating system shall be one or more of the following:

TABLE

SYSTEM	#	RATING	POINTS
1		Pass	2
		Fail	0
2		Exceptional	3
		Successful	2
3		Unsuccessful	0
		Exceptional	3
		Highly Successful	2.5
4		Successful	2
		Unsuccessful	0
		Exceptional	3
		Highly Successful	2.5
		Successful	2
	Marginal	1	
	Unsuccessful	0	

(2) In addition to the above ratings, agency management may establish a rating category for highest level performers under the following conditions:

(a) Each employee who receives this rating shall receive a performance rating of 4.

(b) Agencies shall devise and publish the criteria they will use to select the highest level performers by August 30 of each year. Selection criteria for non-supervisory employees shall be comparable to the Utah Code 67-19c-101(3)(c). Selection criteria for supervisory/management employees shall be comparable to "The Manager of the Year Award."

(3) Each state employee shall receive a performance evaluation effective July 1 of each fiscal year.

(a) Probationary employees shall receive a performance evaluation at the end of their probationary period and again at July 1 of the fiscal year.

(4) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.

(a) The evaluation form shall include a space for employees' comments. The employee shall check a space indicating either agreement or disagreement with the evaluation. The employee may

comment in writing, either in the space provided or on a separate attachment.

R477-10-2. Corrective Actions.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetency, or inefficiency, agency management shall take appropriate, documented, and clearly labeled corrective action in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee to discover the reasons for poor performance and to develop an appropriate written corrective action plan. The employee shall sign the written corrective action plan to certify that he has reviewed it. Refusal to sign the corrective action shall constitute insubordination subject to discipline.

(a) Corrective actions shall include one or more of the following:

- (i) Closer supervision
- (ii) Training
- (iii) Referral for personal counseling by an agency designee
- (iv) Voluntary or involuntary reassignment
- (v) Use of appropriate leave
- (vi) Career counseling and out-placement
- (vii) Period of constant review
- (viii) Opportunity for remediation
- (ix) Written warnings

(2) During implementation of a formal corrective action plan, agency management shall, upon employee's request, evaluate and make reasonable accommodations for employees with disabilities, as defined by ADA, as necessary in order for the employee to perform the essential functions of the job, as long as it does not create an undue hardship on the operations of the agency.

(3) ~~During a~~ The supervisor shall designate an appropriate corrective action period ~~agency management~~ and shall provide frequent evaluation of the employee's progress.

(4) If, after reasonable effort, the corrective actions taken do not result in improved performance that is satisfactory, the employee shall be disciplined according to R477-11-1. The written record of the corrective action shall satisfy the requirement of Section 67-19-18(1).

(5) DHRM shall provide assistance to agency management upon request.

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R477-10-5. Education Assistance.

State agencies may assist employees in their educational goals by granting employees administrative leave to attend classes and/or a subsidy of educational expenses.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

- (a) The educational program will provide a benefit to the state.
- (b) The employee shall successfully complete the required course work with a passing grade.
- (c) The employee shall agree to repay any assistance received if the employee voluntarily terminates within 12 months of completing educational work.

(d) Education assistance shall not exceed [~~\$1,500~~]\$2,500 per employee in any one fiscal year unless approved in advance by the agency head.

(2) Agency management shall be responsible for determining the taxable/non-taxable status of educational assistance reimbursements.

KEY: educational tuition, employee performance evaluation, employee productivity, training programs
~~[June 28, 1997]~~June 27, 1998 **67-19-6**
Notice of Continuation July 1, 1997

DIRECT QUESTIONS REGARDING THIS FILING TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/17/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/27/98

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator



Human Resource Management,
Administration
R477-11
Discipline

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 21071
FILED: 05/01/98, 10:38
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To clarify the ability of the state to discipline employees who no longer meet the requirements of the job. These include the loss of license or certification or other key qualifications required by the job.

SUMMARY: In Subsection R477-11-1(1), "Disciplinary Action," Subsection R477-11-1(1)(g) is added with the requisite language.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None.
- ❖LOCAL GOVERNMENTS: None.
- ❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not affect anyone outside state government.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Resource Management
Administration
2120 State Office Building
PO Box 141531
Salt Lake City, UT 84114-1531, or
at the Division of Administrative Rules.

R477. Human Resource Management, Administration.

R477-11. Discipline.

R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following reasons:

- (a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards and workplace policies;
- (b) work performance that is inefficient or incompetent;
- (c) failure to maintain skills and adequate performance levels;
- (d) insubordination or disloyalty to the orders of a superior;
- (e) misfeasance, malfeasance, nonfeasance or failure to advance the good of the public service;
- (f) any incident involving intimidation, physical harm or threats of physical harm against co-workers, management, or the public[-];

(g) no longer meets the requirements of the position.

(2) All disciplinary actions of career service employees shall be governed by principles of due process. In all such cases, except as provided under Subsection 67-19-18(4), the disciplinary process shall include all of the following:

- (a) The agency representative notifies the employee in writing of the proposed discipline and the reasons.
- (b) The employee must reply within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(3) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any non-career service employee not subject to the same procedural rights, by imposing one or more of the following:

- (a) Written reprimand
- (b) Suspension without pay up to 30 calendar days per incident requiring discipline
- (c) Demotion of any employee through one of the following methods:

(i) An employee may be moved from a position in one class to a position in another class having a lower entrance salary if the duties of the position have been reduced for disciplinary reasons.

(ii) A demotion within the employee's current pay range may be accomplished by lowering the employee's salary rate back on the range, as determined by the agency head or designee.

(d) Dismissal

(i) An agency head shall dismiss or demote a career service employee only in accordance with the provision of Subsection 67-19-18(5). See R477-11-2 of these rules.

(e) When deciding the specific type and severity of the discipline to administer to any employee, the agency representative may consider the following factors:

- (i) Consistent application of rules and standards
- (ii) Prior knowledge of rules and standards
- (iii) The severity of the infraction
- (iv) The repeated nature of violations
- (v) Prior disciplinary/corrective actions
- (vi) Previous oral warnings, written warnings and discussions
- (vii) The employee's past work record
- (viii) The effect on agency operations
- (ix) The potential of the violations for causing damage to persons or property.

(4) If an agency determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, as provided by 67-19-18(4), pending an investigation and determination of facts:

- (a) Paid administrative leave
- (b) Temporary reassignment to another position or work location at the same rate of pay

(5) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(6) Disciplinary actions are subject to the grievance and appeals procedure as provided by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

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KEY: discipline of employees, dismissal of employees, grievances, government hearings
[July 2, 1996] June 27, 1998 **67-19-6**
Notice of Continuation July 1, 1997

◆ _____ ◆
**Human Resource Management,
Administration
R477-12
Separations**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21072

FILED: 05/01/98, 10:38

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Change the time frame for appeal for an employee who has received a notice of abandonment of position to coincide with standard time frames in other grievance procedures.

SUMMARY: In Subsection R477-12-2(1)(a), "Abandonment of Position," the time frame for appeal after a notice of abandonment of position is received or delivered is reduced from ten days to five days.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None.
- ❖ LOCAL GOVERNMENTS: None.
- ❖ OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not affect anyone outside state government.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Resource Management
Administration
2120 State Office Building
PO Box 141531
Salt Lake City, UT 84114-1531, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/17/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/27/98

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

**R477. Human Resource Management, Administration.
R477-12. Separations.**

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R477-12-2. Abandonment of Position.

Employees who are absent from work for three consecutive days and are capable of providing proper notification to their

supervisor, but do not, shall be considered to have abandoned their position.

(1) Management may terminate an employee who has abandoned his position. Management shall inform the employee of the action in writing.

(a) The employee shall have the right to appeal within [ten]five working days of receipt or delivery of the notice of abandonment to the last known address.

(b) If the termination action is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force shall be required by inadequate funds, a change of workload, or lack of work. Reductions in force shall be governed by the following rules:

(1) When staff will be reduced in one or more classes, agency management shall develop a work force adjustment plan (WFAP). Career service employees shall only be notified of being reduced in force after a WFAP has been reviewed and approved by the Executive Director, DHRM. The following items shall be considered in developing the work force adjustment plan:

(a) The categories of work to be eliminated, including positions impacted through bumping, as determined by management.

(b) A decision by agency management allowing or disallowing bumping.

(c) Specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, voluntary or involuntary reassignment, voluntary relocation, and movement to vacant positions based on interchangeability of skills.

(d) A list of all affected employees showing the retention points for each employee.

(e) Furlough

(i) After all other cost saving methods have been exhausted, furlough may be implemented before a reduction in force.

(ii) The provisions of 8-7-(13) may be implemented prior to a reduction in force if the furlough results in the necessary cost savings and is consistent with reasons of business necessity.

(iii) A reduction in force shall be the last, unavoidable action taken for cost savings.

(2) Eligibility for RIF

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity for a hearing with the agency head may be RIF'd.

(b) Employees covered by USERRA and in a leave without pay status must be identified, assigned retention points and notified of the RIF of their previous position in the same manner as career service employees.

(3) Retention points shall be calculated for all affected employees within a category of work as follows:

(a) Seniority shall be determined by the length of total state career service, which commenced in a competitive career service position for which the probationary period was successfully completed.

(i) For part-time work, length of service shall be determined in proportion to hours actually worked.

(ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.

(iii) In the event of ties in retention points, the amount of time employed in the affected agency/department serves as the tie breaker.

(b) Length of state service shall be measured in years and additional days shown as a fraction of a year.

(c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.

(d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.

(e) All affected employees including employees covered under USERRA in a leave without pay status within a category of work shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings as described in R477-10-1.(1)(e). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of the all ratings received as of that time.

(f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.

(g) Retention points shall be calculated for employees covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.

(4) The order of separation shall be:

(a) Non-career service employees

(b) Probationary employees

(c) Career service employees in the order of their retention points when the lowest points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) Employees, including those covered under USERRA in a leave without pay status, who are separated due to a reduction in force shall be given written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) Appeals

(a) An employee separated due to a reduction in force may appeal to the agency head for an administrative review. Employees must submit notice of appeal within 20 working days after the receipt of written notification of separation.

(b) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Board.

(7) Reappointment of RIF'd employee

(a) A RIF'd employee is eligible for reappointment into a career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. See R477-5-4 for selection of employees from the reappointment register. RIF'd employees shall remain on the state reappointment register for twelve months, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each department's FTEs, eligibility

for the reappointment register shall be extended for the entire length of time covered by a freeze.

(c) When determining comparable salary ranges in cases of RIF eligibility or bumping eligibility, a comparison of the previous to the new salary range maximum step is required. The previous salary range shall be considered comparable if the maximum step is equal to or greater than the maximum step of the new salary range.

(d) A RIF'd employee who is reappointed to a state position shall not be required to serve a probationary period. The employee shall enjoy all the rights and privileges of a regular career service employee.

(e) At agency discretion, employees reappointed from a reappointment register may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(8) Appeal rights of RIF'd employee – An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.

(9) Career service employees in exempt positions – Any career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause as provided for by these regulations, shall:

(a) Be placed on a reappointment register for one year from the date of separation and shall be reappointed to any career service position for which the employee qualifies in a pay range comparable to the employee's last position in the career service, provided an opening exists; or

(b) Be reappointed to any lesser career service position for which the employee qualifies pending the opening of a position at the last career service salary range held. The Executive Director, DHRM, shall maintain a reappointment register for this purpose, and shall make the final determination on whether an eligible RIF meets [minimum qualifications]the job requirements for position vacancies.

(c) If the employee has not been reappointed as outlined, his placement on the reappointment register shall be renewed on a yearly basis upon his written request.

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KEY: administrative procedure, employees' rights, grievances, retirement

~~June 28, 1997~~ June 27, 1998 67-19-6
Notice of Continuation July 1, 1997



Human Services, Administration,
Administrative Services, Licensing
R501-2
Core Standards

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE No.: 21084
FILED: 05/01/98, 14:45
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Legislature amended Sections 62A-2-101 and 62A-2-106 with H.B. 120. The rules promulgated under these sections need to conform to the law.

(DAR Note: H.B. 120 is found at 1998 Utah Laws 358, and was effective May 4, 1998.)

SUMMARY: Section R501-2-1 provides that the Office will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas: (A) the administration and maintenance of client and service records; (B) staff qualifications; and (C) staff to client ratios. Section R501-2-14 changes the categories of service that the Office licenses.

(DAR Note: A corresponding 120-day (emergency) rule that is effective as of May 4, 1998 is under DAR No. 21083 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 62A-2-101 through 62A-2-121

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None.
- ❖LOCAL GOVERNMENTS: None.
- ❖OTHER PERSONS: Some agencies will no longer be licensed by the Office of Licensing to provide some services. Therefore they will no longer pay licensing fees for that category of service. This is a savings directly to providers. The approximate savings is \$2,450.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None. There is an aggregate savings of approximately \$2,450. This rule change requires no increase to licensees.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Administration, Administrative Services,
Licensing
Room 209
120 North 200 West
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Gayle Sedgwick at the above address, by phone at (801) 538-4234, by FAX at (801) 538-4553, or by Internet E-mail at hsdadmin.hsdadmin2.gsedgwic@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

KEY: licensing, human services
~~December 2, 1997~~ **June 16, 1998** 62A-2-101 et seq.
Notice of Continuation September 2, 1997

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Reta D. Oram, Director



Human Services, Administration,
Administrative Services, Licensing
R501-14
Criminal Background Screening

R501. Human Services, Administration, Administrative Services, Licensing.

R501-2. Core Standards.

R501-2-1. Definition.

Core Standards are the license requirements for Human Service Programs, as listed in R501-2-14. Where there is duplication of review by another oversight agency, the Office of Licensing, hereinafter referred to as Office, shall accept that documentation as proof of compliance. Pursuant to 62A-2-106, the Office will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas:

- A. the administration and maintenance of client and service records; and
- B. staff qualifications; and
- C. staff to client ratios.

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R501-2-14. Categorical Standards.

In addition to Core Standards, Categorical Standards are specific regulations which must be met for the following:

- ~~[A. Comprehensive Mental Health Treatment Center,~~
- ~~— B. Comprehensive Substance Abuse Program,~~
- ~~— C.]A. Child Placing Agencies,~~
- ~~[D. Residential Treatment,~~
- ~~— E.]B. Day Treatment,~~
- C. Intermediate Secure Treatment Programs for Minors,
- D. Outdoor Youth Programs,
- ~~[F]E. Outpatient Treatment,~~
- ~~[G]E. Outpatient Domestic Violence Perpetrator Treatment,~~
- G. Residential Treatment,
- H. Residential Support, and
- I. Social Detoxification[.];
- ~~[— J. Outdoor Youth Programs, and~~
- ~~— K. Intermediate Secure Treatment Programs for Minors.]~~

R501-2-15. Single Service Program Standards.

Core Standards of the Office do not apply to single service programs.

Single services program standards are the regulations which must be met for the following:

- ~~[A. Driving Under the Influence, referred to as DUI, which standards are found in R544-4,~~
- ~~— B.]A. Adult Day Care, which standards are found in R501-13,~~
- ~~[C.]B. Adult Foster Care, which standards are found in R501-17, and~~
- ~~[D.]C. Child Foster Care, which standards are found in R501-12.~~

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21085

FILED: 05/01/98, 14:45

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Legislature amended Sections 62A-2-101 through 62A-2-121 with H.B. 120. The rules promulgated under these sections need to conform to the laws.

(DAR Note: H.B. 120 is found at 1998 Utah Laws 358, and was effective May 4, 1998.)

SUMMARY: R501-14 provides for an initial and annual criminal background screening on licensees and persons associated with a licensee. Prior to issuing a license, all persons shall submit identifying information for a criminal background screening through the Division of Law Enforcement and Technical Services, Criminal Identification, within the Department of Public Safety. The rule outlines the procedure for submitting information for screening. It also describes the procedure after approval or denial. The rule describes the committee review of convicted individuals and the results of the review. Failure to notify the Office of a conviction after licensure will result in automatic suspension of the license. Confidentiality, retention of records, and expungement of records is outlined in the rule. The rule also provides the right to a hearing.

(DAR Note: A corresponding 120-day (emergency) rule that is effective as of May 4, 1998, is under DAR No. 21081 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 62A-2-101 through 62A-2-121 and 62A-4-13

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None. The size and nature of the workload should not be affected substantially by this change. All potential licensees and persons associated with licensees will continue to be checked by existing staff.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: In most instances, the cost of the FBI record will be less than the current cost of obtaining records from other states. Approximately 3,200 applicants per year are required to provide out-of-state criminal history records.

Most out-of-state applicants need to provide record from between 1-3 states. The cost for each state record ranges from \$50 plus the cost of fingerprinting (\$5 - \$10) to no cost. The most common states we request records from are California (\$32), Nevada (\$45), Idaho (\$5), and Arizona, which will not release a record, necessitating the need for the FBI record. The FBI costs \$24.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The newly required cost for an FBI record will be \$24 per out-of-state applicant. However, as described above, in many cases this will be less than the prior practice requiring records from separate states.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Administration, Administrative Services,
Licensing
Room 209
120 North 200 West
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Gayle Sedgwick at the above address, by phone at (801) 538-4234, by FAX at (801) 538-4553, or by Internet E-mail at hsadmin.hsadmin2.gsedgwic@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Reta D. Oram, Director

R501. Human Services, Administration, Administrative Services, Licensing.

R501-14. Criminal Background Screening.

R501-14-1. Criminal Background Screening.

A. Authority

1. Pursuant to UCA 62A-2-120 and UCA 62A-4a-413, ~~[The Utah Code, 62A-4a-413, requires that]~~ a Bureau of Criminal Identification, ~~[referred to as BCI,]~~ screening shall be conducted on licensees and persons associated with a licensee ~~[an owner, director, member of governing body, employee, provider of care, or volunteer]~~ of a public or private agency or individual licensed by the Department of Human Services, referred to as DHS, to provide services for ~~[to]~~ children.

2. ~~[The Utah Code, 78-30-3.5, requires that a BCI]~~ Pursuant to UCA 78-30-3.5(2)(a), a criminal background screening shall be conducted as part of the Preplacement Adoptive Study.

3. The National Child Protection Act, Public Law 103-209, authorizes a state to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children.

B. Purpose

The purpose of the criminal background screening, referred to as CBS, as a part of the licensing process for DHS, is to protect children in licensed programs ~~[care]~~ from individuals who have been convicted of serious crimes, or individuals whose conduct or pattern of conduct is contrary to the safety and well-being of children.

R501-14-2. Definitions.

A. "Administrative Law Judge" means an employee of the DHS who acts as an independent decision maker who considers the evidence introduced at the hearing and renders a decision based solely on that evidence and all relevant law and policy, herein referred to as ALJ.

B. "Adult" means a person 18 years of age, or older.

~~[— C. "Adult Protective Services Worker" means an employee of the DHS who is designated to conduct abuse or neglect investigations of adults.~~

~~— D. "Applicant" means a public or private agency or person applying for a license to provide direct service to children, disabled and functionally impaired adults.]~~

~~[E]C.~~ "Authorized Worker" means the director or designee of a facility or an employee of DHS regional offices.

~~[F]D.~~ "Authorized DHS Worker" means an employee of the Department of Human Services authorized to have access to OL and CBS information as determined by the Director, Office of Licensing, DHS.

~~[G]E.~~ "Bureau of Criminal Identification" means the designated state agency including "terminal agency users" of the Division of ~~[Law Enforcement]~~ Criminal Investigation and Technical Services Division, within the Department of Public Safety, referred to as DPS, ~~[LETS,]~~ responsible to maintain criminal records in the State of Utah, herein referred to as BCI.

F. "Consumer" means an individual, i.e., client, resident, customer, etc., who receives services from a licensee.

~~[— H. "Certified Program" means programs or facilities certified to provide services by Regions of the Department of Human Services, Division of Child and Family Services, referred to as DCFS, offices and contracted by Division of Services for People With Disabilities, including, small group homes, supervised apartments, supported living, out-of-home respite, training assistance, supported employment, and social or recreation.~~

~~— I. "Child Protective Service Worker" means an employee of the Department of Human Services who is designated to conduct abuse or neglect investigations of children.~~

~~— J. "Covered Individual" means any person who owns, works in, or volunteers in a licensed facility providing direct services to children, or disabled and functionally impaired adults. Also, any person 18 years or over who resides in a home where home-based care is provided.]~~

G. "Direct supervision" means that the licensee or person associated with the licensee is never with a client without their supervisor present.

H. "Director" means the person responsible, as delegated by the governing body, for the technical and programmatic aspects of the program. This person should provide direct supervision of the day-to-day aspects of the program operation.

~~[— K. "The Division of Aging and Adult Services" means the DHS Division responsible for administering and delivering services to aging and disabled adult residents of Utah, referred to as DAAS.]~~

[E]I. "Department of Human Services" means the State Department authorized to provide human services, including licensing, herein referred to as DHS.

[M]J. "Department of Human Services/Criminal Background Screening Committee" means the committee designated by the Director of DHS to review criminal background information, herein referred to as DHS/CBS Committee[committee].

[— N. "Disabled Adult" means a person 18 years of age, or older, who meets the eligibility standards for adult services as established by the Utah Code, Title 62A-3-301(5).]

[O]K. "The Division of Child and Family Services" means the DHS Division which operates regional human service offices[and which licenses home-based programs], herein referred to as DCFS.

[P]L. "The Utah Department of Public Safety" means the Department with the policy making functions and regulatory and enforcement powers pertaining to public safety, herein referred to as DPS.

[Q]M. "The Division of Services for People With Disabilities" means the DHS Division responsible for providing services for people with disabilities, herein referred to as DSPD.

[R]N. "Employee" means a person who performs services for a licensee in a paid or otherwise compensated capacity[a person who works in, or volunteers in a program to provide direct services for children, or disabled and functionally impaired adults in a licensed provider facility].

[— S. "Functional Impairment" means the inability to perform basic self-care functions, such as eating, dressing, and bathing, or instrumental activities of daily living, including home management activities, such as cooking, shopping, or cleaning, because of physical, mental, or emotional condition.

[— T. "Functionally Disabled" means a physical or mental impairment that limits the individual's capacity for independent living.]

Q. "Frequent visitor" means an adult who visits on a recurring basis in a home where home based care is provided.

[U]P. "GRAMA" means the Government Records Access and Management Act that covers information access and privacy of provider files. Refer to [section]UCA 63-2-101(2), Section 45, CFR 5, 1990, Part 2, Section 7 of the Social Security Act; and in the Federal Privacy Act of 1974.

Q. "Human services licensee or licensee" means a youth program, resource family home, or a facility or program that provides services, care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification licensed by the Office of Licensing.

[V]R. "Identifying information" means individual data including, but not limited to; name, all aliases, date of birth, social security number, and driver license.[drivers license number,] or state identification card.[other photo identification.]

[— W. "Licensed Program" means programs or facilities licensed to provide services by DHS OL or Regional DCFS offices.]

S. "Members of Governing Body" means the individuals who comprise the Board of Trustees, Directors or other body who has the ultimate authority and responsibility for the conduct of the licensee.

[X]T. "Office of Administrative Hearings" means the office in DHS which conducts hearings according to the Utah Administrative Procedures Act, herein referred to as OAH.

[Y]U. "Office of Licensing" means the office in DHS, authorized by law, to license facilities and programs, herein referred to as OL.

V. "Owner" means anyone listed in the Articles of Incorporation, Limited Partnership, etc. who has a legal interest in or legal right to the possession and to direct the affairs of the program.

W. "Person associated with the licensee" means any owner, director, member of the governing body, employee, provider of care, or volunteer of human service licensee. Also, any person 18 years of age or older[or over] who resides in a home or is a frequent visitor where home-based care is provided.

X. "Provider of care" means a person who provides direct services for licensee consumers.

[Z]Y. "Provider" means a public or private agency, owner, director, member of governing body, employee, volunteer, or other individual having a license to provide services to children.

[— AA. "Terminal Agency" means an agency accessing Utah Criminal Justice information System, referred to as UCJIS, and provides service to its agency and other authorized agencies by agreement with respect to UCJIS data, herein referred to as TA. The Department of Human Services, Office of Licensing is a "Terminal Agency" established by a Terminal Agency Users Agreement.

[— BB. "Terminal Agency Coordinator" means the representative of the TA appointed by the administrative head of the TA, herein referred to as TAC.]

[C]Z. "Utah Computerized Criminal History Data Base" means the internal, computerized data bases maintained by BCI/DPS, herein referred to as UCCH Database.

[— DD. "The Utah Criminal Justice Information System" means the various files containing information which assists law enforcement and other criminal justice agencies in the protection of life and property for the citizens of the State of Utah, herein referred to as UCJIS.

[— EE. "Utah Social Services Delivery System Child Protective Services/Adult Protective Services Data Bases" means the internal, computerized data bases maintained by DHS as required by Section 62A-4a-116 and 62A-3-311.1, herein referred to as USSDS CPS/APS.]

AA. "UAPA" means the Utah Administrative Procedures Act as found in UCA 63-46b-1 through UCA 63-46b-21, herein referred to as UAPA.

[FF]BB. "Volunteer" means a person other than a parent or guardian of a child or an adult receiving care in the facility, who performs services for a [~~licensed facility~~]licensee in a non-paid capacity.

R501-14-3. Procedure [B]for Criminal Background Screening.

A. All proposed [~~employees, owners, director, members of governing body, providers of care, and volunteers or applicants or providers~~]licensees and persons associated with the licensee who are licensed to provide services [~~to~~]for children, shall submit a

~~[BCI/USSDS Informed]~~ Consent and Release of Liability and Request for Background Screening form to the DHS OL for criminal background screening. Each licensee and person associated with the licensee~~[applicant]~~ will attach a copy of one photo identification issued by a governmental agency, either a driver license, or a state issued identification card,~~[such as drivers license, state issued I.D., or U.S. Passport,]~~ and their Social Security number. The Utah State governmental identification must show an address identical to the ~~[BCI/USSDS]~~ Consent and Release of Liability and Request for Background Screening form, to establish residency.

~~[—B. All employees and prospective employees of the Department of Human Services, Division of Child and Family Services shall submit their fingerprints for criminal background screening.]~~

~~[E]B.~~ Persons 18 years of age or older~~[or over]~~ residing in the home or frequent visitors of ~~[an applicant to provide]~~ home based care must also comply with this requirement.

1. ~~[An applicant]~~A licensee shall submit the identifying information to DHS for criminal background screening prior to hiring a new employee. The licensee assumes all liability if an individual is hired prior to receiving the criminal background screening approval. The licensee is also responsible for directly supervising individuals hired before receiving the required background screening approval. In the case of emergency hiring, ~~[an applicant]~~a licensee shall immediately submit the identifying information to DHS for ~~[CBS]~~criminal background screening.

2. An ~~[applicant]~~application for a new license will not be approved until the criminal background screenings ~~[screening has]~~been completed. For renewal licenses in case of emergency or need for immediate placement of a child, a conditional license may be issued for a maximum of thirty days to allow for the criminal background screening to be completed.

3. ~~[An applicant]~~A licensee applying for ~~[an annual]~~license renewal will have thirty days prior to license expiration to submit the identifying information of all licensees and persons associated with the licensee~~[current employees]~~ to DHS for criminal background screening.

4. A home-based licensee~~[applicant]~~applying for ~~[an annual]~~license renewal will have thirty days prior to license expiration to submit to DHS for criminal background screening the identifying information on all persons associated with the licensee,~~[residing in the home who are over eighteen.]~~

C. When the OL receives the identifying information from the applicant licensee, the OL will access the UCCH Database to conduct the criminal background screening for a determination of whether or not the applicant has been convicted of any crime under the laws of the State of Utah.

D. When a ~~[covered individual has]~~licensee or person associated with a licensee has not lived in Utah for the last five consecutive years, ~~[less than five years,]~~ or has unexplained gaps in work or residence record, the request for a FBI national criminal history record check will be made by OL. The licensee or person associated with the licensee shall be responsible to provide the OL with completed fingerprint cards and a cashier's check or money order for the cost of the nationwide check within 10 days after receiving the request. Licensees or persons associated with the licensee may also be required to provide the OL with a criminal history from the states they have lived in, upon request by the OL.

The person associated with the licensee is responsible for all costs associated with obtaining the criminal history. The criminal history shall be provided within 90 days of the date of the OL request. For persons associated with the licensee who are citizens of foreign countries and have not lived in Utah for the last five consecutive years, the OL may accept a photo copy of both the front and back of U.S. Department of Justice Immigration and Naturalization Service resident alien card to verify the screening was accomplished prior to entry into the United States. The OL may also accept a copy of a criminal history from the country of citizenship to determine if the individual has been convicted of any crime. Either a copy of a resident alien card or criminal history from the foreign country must be submitted to the OL within 90 days after requested by the OL.

E. If a licensee or person associated with the licensee does not provide the requested information and fees within the time frames specified, their application will be denied and they will not be eligible to provide services for the program or children.~~[criminal background screening shall also be made to the states or countries of former residence, or a nationwide BCI as determined by the OL. The request for checks will be made by OL. The covered individual shall be responsible to provide the OL with a completed criminal background screening clearance from the State or Country of former residence, in accordance with their established procedure. The OL may accept a photo copy of both the front and back of U.S. Department of Justice Immigration and Naturalization Service form INS-551 or INS-151, referred to as a green card, to verify the screening was accomplished prior to entry into the United States.]~~

~~[E]E.~~ An applicant requesting initial licensure for a program serving children, who has lived or operated programs in Utah for less than five years, may be screened through the nationwide ~~FBI~~~~[BCI]~~ process.

G. Licensees or persons associated with the licensee who have complied with the above requirements, may continue to work under direct supervision pending the outcome of the criminal background screening.

H. If a licensee or person associated with the licensee has an arrest record without a final disposition, including, but not limited to the following: warrant issued, plea held in abeyance, court date pending, diversion agreement, adjudication withheld, the background screening consent and release of liability will be returned to the licensee or authorized worker. The OL will not process criminal background screenings until there is a final disposition.

~~[—F. When the OL receives the identifying information from the applicant the OL will access the UCCH Database to conduct the BCI criminal background screening for a determination of whether or not the applicant has been convicted of any crime under the laws of the State of Utah.]~~

R501-14-4. Results of Screening.

When the criminal background screening is completed, OL will take the following action:

A. Approval:

If a licensee or person associated with the licensee is found to have no criminal history record, or if the only offenses are misdemeanors or infractions not involving domestic violence, lewdness, battery, offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person,

pornography, prostitution, or any type of sexual offense, and the conviction date is older than five years, a notice will be sent to the authorized DHS worker stating that the person is approved to provide services for the licensed program serving[~~to~~] children.

B. Denial:

1. A licensee or person associated with a licensee convicted of a felony shall not be given a background screening clearance required[granted a license or allowed to volunteer services or be employed] to provide services for the licensed program serving children.

2. A licensee or person associated with a licensee convicted of a misdemeanor or infraction involving an offense identified as domestic violence, lewdness, battery, or an offense identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, shall not be given a background screening clearance[granted a license or allowed employment] to provide, or volunteer, services for the licensed program serving children.

3. If a licensee or person associated with a licensee has been convicted within the last five years of a misdemeanor or infraction not listed in paragraph 2 above,[not involving offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense,] a further study of the criminal and court records will be required. A comprehensive review of the individual circumstances shall be conducted by the DHS/CBS Committee.

4. If a licensee or person associated with a licensee has a criminal history record that indicates there are misdemeanor or infraction offenses, a misdemeanor or infraction conviction, conduct, or pattern of conduct, or failure to disclose a criminal conviction on the Consent and Release of Liability and Request for Background Screening form, it may result in a denial of a criminal background clearance.[a license, employment, or providing volunteer services.] [The application will require further]Further study of the criminal and court records by the DHS/CBS Committee will be conducted.[—A completed fingerprint card must be submitted by the applicant to facilitate the review:]

~~— a. The OL will send a notice to the authorized worker requesting a fingerprint card, waiver and fee to be submitted to DPS BCI by OL.~~

~~— b. The person shall be fingerprinted either by the local law enforcement agency or an agency approved by law enforcement.~~

~~— c. DPS BCI will submit the results and cards to OL. Simultaneously the DHS/CBS committee will review the misdemeanor offenses within the last five years, to determine whether or not the person shall be approved or denied.~~

~~— 5. Procedure for Obtaining and Processing Fingerprint Cards:~~

~~— a. The required BCI card must be obtained from OL, or DPS, because these cards are stamped with DHS OL. Use of other cards may result in difficulties in completing the BCI screening, which can cause a loss of license or employment.~~

~~— b. The fingerprinted card, waiver, and the fee, in the form of a money order or cashiers check made payable to Utah DPS BCI, shall be sent to DHS for processing. This shall be completed by the covered individual.~~

~~— c. DPS will send fingerprint cards and screening information to the OL.]~~

5. If a licensee or person associated with a licensee may have a criminal record, the OL may send a notice to the licensee or

authorized worker requesting a fingerprint card and fee to be submitted to the OL within 72 hours after receiving the notice.

a. The required fingerprint card must be obtained from OL because these cards are stamped with DHS OL. Use of other cards may result in difficulties in completing the BCI screening, which may cause a loss of license or employment.

b. The person shall be fingerprinted either by the local law enforcement agency or an agency approved by law enforcement.

c. The fingerprinted card and the fee, in the form of a money order or cashier's check made payable to Utah DPS BCI, shall be sent to DHS OL for processing. This shall be completed by the person associated with a licensee. Failure to submit the fingerprint card and fee will result in the background screening application being denied and the person associated with the licensee will not be eligible to provide services for children.

d. The fingerprint card and fee will be submitted to the DPS BCI by the OL.

e. DPS BCI will submit the results and cards to OL.

f. The DHS/CBS committee will concurrently review the misdemeanor and infraction offenses within the last five years to determine whether or not the licensee or person associated with a licensee shall be approved or denied.

R501-14-5. DHS/CBS Committee Review.

A. A DHS/CBS Committee composed of members designated by the Director of DHS representing the various Divisions of DHS shall conduct a comprehensive review of the criminal background screening results at least twice a month.

B. The Committee shall, at a minimum, review the date and the type of offense or conviction, written documentation, ~~[and]~~ the legal status of the individual, conduct or pattern of conduct, and if the criminal conviction was disclosed on the Consent and Release of Liability and Request for Background Screening form.

C. The committee shall maintain a record of the review to include the findings of fact, conclusions of each case, and a copy of the ~~[BCI]~~ UCCH record and fingerprint card, when appropriate.

R501-14-6. Results of the DHS/CBS Committee Review.

A. Approval: If based upon DHS/CBS committee review, a decision is reached to approve ~~[an individual, a licensee]~~ a licensee or person associated with a licensee, a criminal background screening clearance shall be issued or[renewed].

B. Denial:

1. If, based upon DHS/CBS Committee review of the circumstances, there exists credible evidence that the licensee or person associated with a licensee,[employee, volunteer, owner, director, or an adult living in a licensed home] poses a threat to the safety and health of the consumers being served by the human service program, a criminal background screening clearance shall not be issued.[license shall be denied or revoked.]

2. If a decision is reached to deny, or revoke, proper legal notice of agency action will be sent to the licensee[provider] or applicant by the DHS or the OL.[Authorized Regional DHS Office or worker.]

3. The licensee or person associated with the licensee[provider or applicant] may request a hearing in accordance with the UAPA, UCA 63-46b.

R501-14-7. Conviction After Licensure.

If a licensee or person associated with the licensee is convicted of a felony, misdemeanor, or infraction covered individual, who must clear the criminal background screening, is convicted of a felony or misdemeanor after a license is issued, the licensee [license holder] has five working days to notify OL. Failure to notify will result in automatic, immediate suspension of the license. When notice of a conviction is received, OL will respond as stated in UCA 501-14-3, et seq. [procedure section of this policy:]

R501-14-8. Confidentiality.

A. The results of the criminal background screening shall only be released to individuals approved by the Department of Human Services who have signed a [Department of Public Safety] Non-Disclosure statement, which includes acknowledging the existence or non-existence of a criminal history by an Authorized DHS Worker. The information will be disclosed according to [Utah Code]UCA 53-5-214.

B. The results of the criminal background screening will not be given over the telephone. The information must be requested in writing with the proper releases. [to comply with GRAMA according to 63-2-201(2):]

C. All documents relating to a criminal background screening must be maintained and stored as confidential material. When determined the document is no longer needed it must be destroyed, in a manner that secures its privacy, i.e., shredded, burned, etc.

R501-14-9. Retention of Identifying Information, Fingerprint Cards, and [BCI]Criminal Background Screening.

A. Identifying Information [Fingerprint Cards,] and criminal background screening results shall be retained by the licensee for the duration of the person's association with the licensee. Screening results cannot be shared, transferred, or further disseminated to any other licensee or individual. [applicant's employment:]

B. Identifying information, fingerprint cards, and criminal background screening results of persons whose background screening have been denied, and fingerprint cards for persons approved, [who have been denied a license or employment,] shall be retained in the OL, pursuant to UCA 63-2-101, et seq.

R501-14-10. Expungement.

A. Licensees and persons [Persons] associated with a licensee whose background screening applications have been denied [licensing or employment,] due to a criminal record, may request further information or expungement of the record through the DPS BCI pursuant to UCA 77-18-2.

[A]B. When a criminal record is expunged, the licensee or person associated with a licensee may re-apply for a background screening clearance. [license or for employment with a licensed provider:]

[B]C. Information regarding procedures for criminal record expungement may be obtained from BCI. The costs of expungement are the responsibility of the licensee or person associated with the licensee. [individual:]

[C. The provider or applicant has no right to a Utah Administrative Procedures Act, herein referred to as UAPA, unless there is a disputed issue of fact with the DHS policy:]

R501-14-11. Administrative Hearing.

A. A licensee or person associated with the licensee, who has been convicted of a felony, has no right to a UAPA hearing.

B. A licensee or person associated with the licensee [A provider or applicant] who has been denied a license or employment based upon a misdemeanor or infraction conviction may request a hearing in accordance with the UAPA. [An individual] A licensee or person associated with the licensee requesting a hearing may continue to work under direct supervision until the hearing decision is issued. The person associated with the licensee or a licensee has no right to a UAPA hearing, unless there is a disputed issue of fact with the DHS policy.

[A]C. When action to deny, revoke, or suspend a license is based upon a review by the DHS/CBS Committee and new evidence not considered by the committee is introduced at [a] the hearing, the committee's representative may request that the case be remanded to the committee to consider the new evidence.

1. If the committee determines denial, revocation, or suspension is still warranted after further review, the committee chairperson will notify both the person associated with the licensee or the licensee [applicant] and the OAH. The ALJ may then reconvene the hearing if necessary to complete the record. A final decision will be issued based on all of the evidence in the record.

[B]2. If, after reviewing the new evidence, the committee recommends licensure, the OL [committee chairperson shall advise the licensor. The licensor] will then send an appropriate notice to the licensee [applicant] with a copy to OAH. After receiving notice that the license in dispute has been granted, OAH will close its files without issuing a decision.

~~**R501-14-12. Certified and Exempt Facilities.**~~

~~A. Facilities or covered individuals which are certified rather than licensed by DCFS, DAAS, or DSPD must comply with the procedures as outlined above.~~

~~B. Facilities and persons exempt from licensure or certification are exempt from the criminal background screening requirements.]~~

KEY: licensing, human services
[February 3, 1997] June 16, 1998

62A-2-120
62A-4a-413



Human Services, Administration,
Administrative Services, Licensing
R501-18
Abuse Background Screening

NOTICE OF PROPOSED RULE
(New)

DAR FILE NO.: 21086
FILED: 05/01/98, 14:45
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Legislature amended Sections 62A-2-101 through 62A-2-121 with H.B. 120. The rules promulgated under these sections need to conform to the law.

(DAR Note: H.B. 120 is found at 1998 Utah Laws 358, and was effective May 4, 1998.)

SUMMARY: Pursuant to Sections 62A-2-121 and 62A-4a-116, R501-18 provides for an annual screening of licensees and persons associated with the licensee. This rule outlines the procedure for that screening. Prior to issuing an initial or renewal license, licensees or persons associated with the licensee shall submit identifying information for abuse screening. All persons associated with the licensee shall submit identifying information for abuse screening before being hired. If the licensee or person associated with the licensee is identified as a substantiated perpetrator, it shall require further review the Department of Human Services. If a licensee or person associated with the licensee is denied clearance as a result of that review, a hearing may be requested. Information shall remain confidential and retained according to the Government Records Access and Management Act (GRAMA) requirements.

(DAR Note: A corresponding 120-day (emergency) rule that is effective as of May 4, 1998 is under DAR No. 21082 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 62A-2-101 through 62A-2-121, 62A-4a-116, and 62A-3-311.1

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None. The size and nature of workload should not be affected substantially by this change. All potential licensees and persons associated with licensees will continue to be screened by existing staff.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: Unknown. Pursuant to Section 62A-2-121, potential costs could include time off work and lost wages.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule filing does not substantially change prior practice in screening procedures for individuals. Potential costs, including time off work and lost wages continue to exist because of Section 62A-4a-413 and with the newly enacted Section 62A-2-121.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Administration, Administrative Services,
Licensing
Room 209
120 North 200 West
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Gayle Sedgwick at the above address, by phone at (801) 538-4234, by FAX at (801) 538-4553, or by Internet E-mail at hsadmin.hsadmin2.gsedgwic@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Reta D. Oram, Director

R501. Human Services, Administration, Administrative Services, Licensing.**R501-18. Abuse Background Screening.****R501-18-1. Management Information System.****A. Authority**

1. Pursuant to UCA 62A-2-121 and UCA 62A-4a-116, a review of the Management Information System shall be conducted of all licensees and persons associated with the licensee as part of the initial and annual licensing process.

2. Pursuant to UCA 62A-3-311.1 a screening of licensees and persons associated with the licensee shall be conducted through the Adult Protective Services Data Base.

B. Purpose

The purpose of screening, as a part of the licensing process for the Department of Human Services, is to protect children and vulnerable adults from individuals who may have committed acts of abuse, neglect, or exploitation of a child or vulnerable adult.

R501-18-2. Definitions.

A. "Administrative Law Judge" means an employee of the DHS who acts as an independent decision maker who considers the evidence introduced at the hearing and renders a decision based solely on that evidence and all relevant law and policy, herein referred to as ALJ.

B. "Adult" means a person 18 years of age, or older.

C. "Adult Protective Services Worker" means an employee of the Department of Human Services who is designated to conduct abuse or neglect investigations of adults.

D. "Authorized Worker" means the director or designee of a facility or an employee of Department of Human Services.

E. "Authorized DHS Worker" means an employee of the Department of Human Services authorized to have access to the management information system as determined appropriate by the Director, Office of Licensing, Department of Human Services.

F. "Child Protective Service Worker" means an employee of the Department of Human Services who is designated to conduct abuse or neglect investigations of children.

G. "Consumer" means an individual, i.e., client, resident, customer, etc. who receives services from a licensee.

H. "Direct supervision" means that the licensee or person associated with the licensee is never with a client without their supervisor present.

I. "Director" means the person responsible, as delegated by the governing body, for the technical and programmatic aspects of the program. This person should provide direct supervision of the day-to-day aspects of the program operation.

J. "The Division of Aging and Adult Services" means the DHS Division responsible for administering and delivering services for aging and disabled adult residents of Utah, herein referred to as DAAS.

K. "Department of Human Services" means the State Department authorized to provide human services, including licensing, herein referred to as DHS.

L. "The Division of Child and Family Services" means the office of DHS, which operates regional human service offices, herein referred to as DCFS.

M. "The Division of Services for People With Disabilities" means the DHS Division responsible for providing services for people with disabilities, herein referred to as DSPD.

N. "Employee" means a person who performs services for a licensee in a paid or otherwise compensated capacity.

O. "Frequent Visitor" means an adult who visits on a recurring basis in a home where home based care is provided.

P. "GRAMA" means the provisions of the Government Records Access and Management Act that provides for and covers information access and privacy of provider files, as found in UCA 63-2-101, et.seq.

Q. "Human services licensee" or "licensee" means a youth program, resource family home, or a facility or program that provides services, care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification licensed by the Office of Licensing.

R. "Identifying information" means individual data including, name, date of birth, social security number, and a copy of a driver license, or state identification card, and all aliases.

S. "Management Information system" means the part of the DCFS management information system developed for licensing purposes in accordance with UCA 62A-4a-116 and the Adult Protective Services Database identified in UCA -3-311.1 herein referred to as "management information system"

T. "Member of a Governing Body" means the individuals who comprise the Board of Trustees, Directors or other body who has the ultimate authority and responsibility for the conduct of the licensee.

U. "Owner" means anyone listed in the Articles of Incorporation, Limited Partnership, etc. who has a legal interest in or the legal right to the possession and to direct the affairs of the program.

V. "Office of Administrative Hearings" means the office in DHS which conducts hearings according to the Utah Administrative Procedures Act, herein referred to as OAH.

W. "Office of Licensing" means the office in DHS, authorized by law, to license facilities and programs, herein referred to as OL.

X. "Person Associated with the Licensee" means any owner, director, member of the governing body, employee, provider of care, or volunteer of a human service licensee. Also, any person 18 years or older who resides in a home or frequent visitor to a home where home based care is provided.

Y. "The Provider of Care" means a person who provides direct services for licensee consumers.

Z. "Provider" means a public or private agency, owner, director, member of governing body, employee, volunteer, or other individual having a license to provide services to children.

AA. "UAPA" means the Utah Administrative Procedures Act as found in UCA 63-46b-1 through UCA 63-46b-21, herein referred to as UAPA.

BB. "Volunteer" means a person other than a parent or guardian of a child or vulnerable adult receiving care in the facility, who performs services for a licensed facility in a non-paid capacity.

CC. "Vulnerable Adult" means a disabled adult as defined in UCA 62A-3-301 (5); any person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions concerning his person, or is unable to care for his own personal safety or provide necessities such as food, shelter, clothing or medical care, without which physical injury or illness may occur.

R501-18-3. Procedure for Abuse Background Screening.

A. Prior to hiring an individual, human service programs required to be licensed by DHS shall submit identifying information, including the names, date of birth, social security number, and driver's license or state identification card of all licensees and all persons associated with the licensee. Requests for clearance shall also be resubmitted annually thereafter. The screening will search for a history of abuse, neglect or exploitation of children or vulnerable adults.

B. Human service programs which are home based shall also submit identifying information including, the names, date of birth, social security number and a copy of the driver license or state identification card of all licensees and persons associated with the licensee for an initial and annual screening of the Management Information System to search for a history of abuse, neglect or exploitation of children or vulnerable adults.

C. If a licensee hires an individual without having the abuse background screening approval, the licensee assumes all liability and is responsible for directly supervising all individuals who have not received the required abuse background screening approval.

R501-18-4. Results of Screening.

A. Approval:

If the name of the licensee or person associated with the licensee does not appear on the management information system, the abuse background screening shall be cleared to provide services in the licensed DHS facility, program, or home serving children or vulnerable adults. Approval is only applicable to this specific facility, program, or home.

B. Comprehensive Review:

If the licensee or person associated with the licensee is identified in the Management Information System as a perpetrator of abuse, neglect or exploitation of children or vulnerable adults, their abuse background screening shall require further review by the DHS in accordance with R501-18-5.

R501-18-5. DHS Comprehensive Review.

A. A comprehensive review shall be conducted by the DHS.

B. The review shall seek to obtain the following information, including input regarding mitigating circumstances:

1. What is the nature of the abuse or neglect?
2. How long ago did the incident occur?
3. What was the severity of the abuse or neglect?
4. Was legal action taken?
5. What steps have been taken to remedy the situation?

6. Based upon the information available, does this person pose a threat to the safety and well-being of consumers of the licensee?

7. The review may also seek additional information from the applicant and other individuals, including all enforcement personnel who completed the investigation and the investigative worker.

C. The DHS shall maintain a record of the review to include the findings of fact and the conclusions of each case.

R501-18-6. Results of the DHS Review.

A. Approval:

1. If the DHS review determines that the licensee or person associated with the licensee does not pose a threat to consumers, the abuse background screening shall be approved.

B. Denial:

1. If, based upon DHS review of the circumstances, there exists credible evidence that the licensee, person associated with the licensee, or person living in the home or frequent visitor to the home poses a threat to the safety and health of the consumers being served by the human service licensee, an abuse background screening shall not be approved.

2. A Notice of Agency Action, herein referred to as NAA, will be sent to the licensee and the person associated with the licensee stating that the application for a abuse background screening approval has been denied.

a. In the case of out of home care, if the provider or applicant is terminated or dismissed within 24 hours, a license may continue.

b. If the licensee or person associated with the licensee is an adult residing in a home or a frequent visitor to a home where home based care is offered, the Office of Licensing shall not issue a license.

R501-18-7. Administrative Hearing.

A licensee or person associated with the licensee who is denied approval may request a hearing within 10 days in accordance with UAPA. The licensee or person associated with the licensee have no right to a UAPA hearing unless there is a disputed issue of fact with the DHS policy.

A. Status Pending the Hearing Results:

1. A licensee or person associated with the licensee requesting a hearing may continue to work under direct supervision until the hearing decision is issued.

2. If the licensee or person associated with the licensee is unable to work under direct supervision, a NAA shall be sent to the licensee stating that their current license has been placed on conditional status pending the results of the hearing.

3. If a person 18 or older residing in a home or a frequent visitor to a home where home based care is provided requests a hearing, a NAA shall be sent to the licensee stating that their current license has been placed on conditional status pending the outcome of the hearing and the person 18 or older living in the home or frequent visitor must never be present when consumers being served by the licensee are in the home pending the hearing decision.

4. The NAA must be posted in a conspicuous place where parents, consumers, or the public will obviously see and be able to read the notice. Programs with multiple service locations will post applicable notices at each of those locations. The Office of Licensing may also notify parents or the public directly, or require the facility or program to do so.

B. Participants of the DHS review shall be available to testify at the hearing.

1. When action to deny, revoke, or suspend a license or deny an abuse background screening is based upon the DHS review, and new evidence not considered by the DHS review is introduced at the hearing, the DHS review representative may request that the case be remanded to the DHS to consider the new evidence. If the DHS determines denial, revocation, or suspension is still warranted after further review, the DHS will notify both the licensee, person associated with the licensee, and the OAH. The OAH may then reconvene the hearing if necessary to complete the record. A final decision will be issued based on all of the evidence in the record.

2. If, after reviewing the new evidence, the DHS recommends that the abuse background screening be approved, the DHS shall advise the licensee and person associated with the licensee. The DHS will then send an appropriate notice to the licensee and person associated with the licensee and a copy to OAH.

R501-18-8. Referral After Licensure.

If a licensee or person associated with a licensee providing services to the program serving children or vulnerable adults who must obtain the abuse background screening approval is substantiated for adult or child abuse, neglect, or exploitation after receiving the abuse background approval, the licensee has five working days to notify the OL. Failure to notify may result in automatic, immediate suspension of the license. When notice of a substantiated abuse record is received, the OL will respond as stated in R501-18-5 above.

R501-18-9. Confidentiality.

The information contained on the Management Information System is confidential and shall only be released as authorized by UCA 62A-4a-412 for children or UCA 62A-3-311.1 for adults.

A. The information in the Management Information System may only be released to individuals approved by the DHS in accordance with UCA 62A-4a-412 or UCA 62A-3-311.1.

B. The information in the Management Information System will not be given over the telephone. The information must be requested in writing with the proper releases.

C. All documents relating to an abuse background screening must be maintained and stored in accordance with GRAMA.

KEY: licensing, human services

June 16, 1998

62A-2-101 et seq.

◆ ————— ◆
Human Services, Recovery Services
R527-100
Uniform Interstate Family Support Act

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21018

FILED: 04/27/98, 16:45

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Under 42 U.S.C. 666(f), if any provision of the Uniform Interstate Family Support Act is held invalid, no other provision, or its application, is affected. A rule for the severability of provisions contained in Chapter 45f of the Utah Code is, therefore, necessary and carries out the requirement in Section 78-45f-901, that the chapter "shall be applied and construed...to make uniform the law... among states enacting it."

SUMMARY: This rule shall keep Utah's Uniform Interstate Family Support Act valid even if one part of it is struck down as invalid by a court.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 78-45f-100 through 78-45f-901
FEDERAL MANDATE FOR THIS FILING: 42 U.S.C. 666(f)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Costs to the State budget associated with creating a new Uniform Interstate Family Support Act (UIFSA) every time one of its provisions is held invalid can be avoided by implementation of this proposed rule. Many of the traditional costs associated with two-state legal actions for the enforcement of support can also be avoided if UIFSA remains effective.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: Keeping UIFSA substantially intact and effective, regardless of the invalidation of one or more of its provisions, will have the effect of maintaining the essential flow of services necessary for many families in Utah and other states to obtain child support and medical support, resulting in substantial financial benefit to them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost associated with this proposed rule.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Recovery Services
Fourteenth Floor, Eaton/Kenway Bldg.
515 East 100 South
PO Box 45011
Salt Lake City, UT 84145-0011, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Wayne Braithwaite at the above address, by phone at (801) 536-8986, by FAX at (801) 536-8509, or by Internet E-mail at hsdadmin.hsorssl.cwbraithw@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Emma Chacon, Director

R527. Human Services, Recovery Services.

R527-100. Uniform Interstate Family Support Act.

R527-100-1. Purpose.

The purpose of this rule is to provide for severability of provisions in the Uniform Interstate Family Support Act (UIFSA), Section 78-45f-100 through 78-45f-901 in accordance with 42 U.S.C. Subsection 666(f).

R527-100-2. Severability Clause.

If any provision of Chapter 45f or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given without the invalid provision or application, and to this end the provisions of this chapter are severable.

KEY: child support, interstate

1998

78-45f-100 through 78-45f-901



Human Services, Recovery Services
R527-300
Income Withholding

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21006

FILED: 04/21/98, 15:08

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: None of the laws upon which this rule is based expressly provide for the use of a single notice of income withholding when the obligor has more than one case, nor is there any statutory language which appears to contemplate its potential use. Subsection 62A-11-413(4) actually makes reference to "...multiple notices to withhold which it has issued with regard to that obligor..." in addressing allocation of support payments that have been received by the office. An examination of income withholding in both federal and state law reveals that the entire process is built on a "per order" (and therefore per obligee or per case) basis. Since Section R527-300-7 expressly allows the use of a single Notice to Withhold Income for Child Support when the obligor has multiple cases, it needs to be taken out of the rule since it does not appear to be authorized or mandated by law.

SUMMARY: Section R527-300-7 has been deleted and the paragraph following it has been renumbered. As a result, the office will no longer be authorized to issue a single Notice to Withhold Income for Child Support when the obligor has multiple cases, but will issue one for each case in which income withholding is appropriate.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 62A-11-401, 62A-11-405, 62A-11-406, 62A-11-413, and 62A-11-414

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Because the office will be issuing Notices to Withhold Income for Child Support per qualifying case rather than per obligor, the amount of spending for the notices and their preparation will increase over current levels. This cost may be offset by a savings in payment accounting and distribution if employers or others payors of income begin specifying the amounts deducted per case rather than per obligor in transmittals that accompany their periodic transmission of withheld amounts to the office.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: The number of Notices to Withhold Income for Child Support generated by the office will increase when they are issued per qualifying case rather than per obligor. Employers and other payors of income receiving these notices may experience an increase in income withholding processing costs due to the increased volume.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Employers and other payors of income will begin receiving Notices to Withhold Income for Child Support per qualifying case rather than per employee/obligor with a child support obligation. Because the number of incoming notices will increase, some employers or other payors of income may experience an increase in income withholding processing costs.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Recovery Services
Fourteenth Floor, Eaton/Kenway Bldg.
515 East 100 South
PO Box 45011
Salt Lake City, UT 84145-0011, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Wayne Braithwaite at the above address, by phone at (801) 536-8986, by FAX at (801) 536-8509, or by Internet E-mail at hadmin.hsorsslc.wbraithw@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Emma Chacon, Director

**R527. Human Services, Recovery Services.
R527-300. Income Withholding.**

.....

[R527-300-7. When the Obligor has More than one Case:

— If the obligor has a case with more than one obligee, one Notice to Withhold Income for Child Support may be sent to the payor. The notice will include the combined total for all of the obligor's cases.

]

R527-300-[8]7. Income Withholding Termination.

1. Income withholding should be terminated if:

a. the obligor no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;

b. the Non-IV-A obligee terminates the ORS/CSS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;

c. the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

KEY: child support, income, wages

~~February 22, 1996~~1998

Notice of Continuation October 31, 1997

62A-11-401

62A-11-405

62A-11-406

62A-11-413

62A-11-414



Human Services, Recovery Services

R527-305

**High-Volume, Automated
Administrative Enforcement in
Interstate Child Support Cases**

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21017

FILED: 04/27/98, 16:25

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Subsection 466(a)(14) of the Social Security Act requires a State to use automatic data processing to search various State data bases to identify the location of the obligor and the obligor's assets, in response to a request made by another State to enforce support orders. The support collection services referred to in Section 62A-11-305 that must be provided to another state when a request for "High-Volume, Automated Administrative Enforcement" is received, are specified in the proposed rule.

SUMMARY: Under the proposed rule, when another state IV-D child support agency asks the State of Utah Child Support Services program (CSS/ORS) to search its data bases to assist in the enforcement of child support orders, CSS/ORS will match the data provided by the requesting state against Utah State data bases it has access to, and transmit the

results to the requesting state. The requesting State may submit a single high-volume referral (multiple cases), electronically or by other means. The cases submitted for the search will remain the responsibility of the referring State and will not be considered transferred to CSS/ORS. Nevertheless, CSS/ORS will give the request the same priority as a regular interstate case referral for support services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 62A-11-305
FEDERAL MANDATE FOR THIS FILING: 466(a)(14), Social Security Act

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Any costs involved in data searches for other States will be offset by similar services provided by other states to Utah.
❖LOCAL GOVERNMENTS: None.
❖OTHER PERSONS: None.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Services
Recovery Services
Fourteenth Floor, Eaton/Kenway Bldg.
515 East 100 South
PO Box 45011
Salt Lake City, UT 84145-0011, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Wayne Braithwaite at the above address, by phone at (801) 536-8986, by FAX at (801) 536-8509, or by Internet E-mail at hsdadmin.hsrsslc.wbraithw@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Emma Chacon, Director

R527. Human Services, Recovery Services.
R527-305. High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases.

R527-305-1. Authority.
This rule establishes procedures for High-Volume, Automated Administrative Enforcement in Interstate child support cases pursuant to Section 62A-11-305, and Subsection 466(a)(14) of the Social Security Act.

R527-305-2. Purpose.
The purpose of this rule is to provide procedures for the IV-D Child Support Services program within the Office of Recovery Services (CSS/ORS), when a request is received from a IV-D child

support agency of another state for high-volume, automated administrative enforcement of support orders.

- R527-305-3. Definitions.**
1. "Requesting State" means the state sending an administrative interstate enforcement request to the assisting state.
 2. "Assisting State" means the state matching the requesting state's delinquent obligors against data bases and, if appropriate, seizing assets on behalf of the requesting state.
 3. "High-Volume, Automated Administrative Enforcement in Interstate Cases" means the use of automated data processing to search the assisting state's data bases to determine whether information is available regarding parents who owe child support in the requesting state, and the seizure of identified assets, if appropriate, using the same techniques as used in intrastate cases.

R527-305-4. Procedures for High-Volume, Automated Administrative Enforcement of Interstate Referrals.

- The procedures below apply whenever CSS/ORS receives a request for high-volume, automated administrative enforcement of interstate cases from another state's IV-D agency.
1. Another state may transmit a request for automated administrative enforcement of support orders to CSS/ORS by electronic or other means. The requesting state may transmit a single high-volume referral that includes multiple requests.
 2. A request for automated administrative interstate enforcement shall not be considered a transfer of the cases referred to the CSS/ORS caseload.
 3. CSS/ORS will conduct a match of the referral data against Utah state databases to which it has access to determine if information regarding the obligor is available. CSS/ORS will notify the requesting state of the results of the search.
 4. CSS/ORS will give an automated administrative interstate enforcement request the same priority it gives to a regular interstate case referred by another state for collection services or establishment, modification, or registration of an order.

KEY: child support, interstate
1998 **62A-11-305**



Transportation, Motor Carrier
R909-1
Safety Regulations for Motor Carriers

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE No.: 21089
FILED: 05/01/98, 16:51
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To incorporate a Safety Fitness Rating Methodology. This will be used to measure the safety fitness of motor carriers according to the safety fitness standard contained in 49 CFR 385. To revise

requirements concerning glazing materials, windshield condition, coloring and tinting of windshields and windows and obstructions to the driver's field of view for commercial motor vehicles. This will also remove obsolete regulatory language. To make technical amendments such as references within Parts 387, 390, 395 and appendices to Subpart B. Within Part 387, remove unnecessary terms and add a broader term, and to clarify requirements under 395. To remove all requirements and references to Part 395, Subpart H, Controlled Substance Testing from parts 355 through 391. Also to make corrections in Parts 355, 383, 384, 389 391 and 392 to reflect the removal of Subpart H. The authority is still the same, the requirements are now under Part 382 and the citations will reflect that cite. Technical amendments regarding physical qualifications and examinations for drivers and controlled substance and alcohol use and testing for drivers under the commercial driver's license program.

SUMMARY: Part 393.60 will be changed to state that a motor vehicle must be equipped with a windshield and sets requirements on glazing, coloring or tinting of windshields and windows and devices mounted at the top of the windshield. Where decals or stickers may be placed on the windshield. Part 385.3 a definition is added for Conditional Safety Rating and Unsatisfactory safety rating. Parts 385.9, 385.11, 385.13, 385.15, 385.17, 385.19 and Appendix B are added to establish guidelines used to measure a motor carrier's safety fitness and procedures for a motor carrier to challenge a rating and penalties. Remove any cites to Subpart H under 391, requirements for controlled substances and alcohol testing are under Part 382, making Subpart H obsolete. Technical amendments to Parts 382. Amend the definition of Controlled substance under Part 383.5 to include substances listed on schedules I through V of 21 CFR 1308 as they may be amended by the United States Department of Justice. Amend Part 383.51 to reflect this change. Part 383.111(a) add 382 as driver-related elements of the regulations. Amend Part 381.15(c)(2)(ii), 381.15(c)(2)(iii), and 392.4(a)(1) to include Schedule I controlled substances. Part 391.41(b)(12) Add cite that they driver does not use a controlled substances identified in 21 CFR 1308.11 Schedule I, amphetamine, a narcotic, or any other habit-forming drug, with the exception if it is prescribed by a licensed medical practitioner who: (a) is familiar with the driver's medical history and assigned duties and has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle. Part 393.5 add Length of a manufactured home, manufactured home & width of a manufactured home as definitions. Part 393.75(f) establish tire loading restrictions except for manufactured homes; (g) tire loading restrictions for manufactured homes. Remove 391.43(a)(2), and Appendix D and E to Subchapter B.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 27-17-103

THIS FILING INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Regulations Management Corporation, 49 CFR 350-399, October 1, 1997 edition and amendments dated

November 1, 1997, December 1, 1997, January 1, 1998, February 1, 1998, March 1, 1998, and April 1, 1998

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: \$64
- ❖LOCAL GOVERNMENTS: None.
- ❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be an approximate \$64 cost to the Office of Motor Carriers. This will be due to approximately 200 motor carriers being rated in a year and letters of proposed rating needing to be mailed. Since the Safety Fitness Rating Methodology is establishing regulations by which carriers are rated, but not new regulations for the motor carriers, there is no cost associated with it. The requirements for commercial motor vehicles to have a windshield is already defined under state law, this will not add a financial burden upon the motor carrier.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Transportation
Motor Carrier
Calvin Rampton Building
4501 South 2700 West
PO Box 148240
Salt Lake City, UT 84114-8240, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Tamy L. Scott at the above address, by phone at (801) 965-4752, by FAX at (801) 965-4847, or by Internet E-mail at src0fs02.tscott@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Tamy L. Scott, Transportation Safety Investigator

R909. Transportation, Motor Carrier.

R909-1. Safety Regulations for Motor Carriers.

R909-1-1. Adoption of Federal Regulations.

A. Safety Regulations for Motor Carriers, 49 CFR Parts 350 through ~~the end of part~~ 399, ~~and their amendments as of February 1, 1998;~~ as contained in the October 1, 1997 edition as printed ~~in~~ by the Regulations Management Corporation service, ~~are~~ is incorporated by reference, except for parts 395.1(l), 395.1(m), 395.1(n) and 395.1(o). In addition, amendments to the same edition, which appear in the November 1, 1997, December 1, 1997, January 1, 1998, February 1, 1998, March 1, 1998 and April 1, 1998, are incorporated by reference within this rule. ~~This applies~~ These requirements apply to all motor carrier(s) as defined in 49 CFR ~~Title 49~~ Part 390.5 and UCA 27-17-102(4) engaged in Interstate and/or Intrastate Commerce.

B. In the instance of a driver who is used primarily in the transportation of construction materials and equipment, as defined

under 395.2, to and from an active construction site, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 36 or more successive hours.

KEY: trucks, transportation safety
[February, 1998] June 1998 27-17-103
27-17-104

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Workforce Services
 Employment Development
 Fifth Floor
 140 East 300 South
 PO Box 45245
 Salt Lake City, UT 84145-0249, or
 at the Division of Administrative Rules.

◆ **Workforce Services, Employment Development**
R986-220
Financial Assistance Tables

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 21013
 FILED: 04/24/98, 15:09
 RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The reason for this filing is to change the monthly amount of the financial assistance payment that is paid to eligible households. The amount of the payment increases as the household size increases. The adjusted payment amounts reflect a 6% increase as approved by the 1998 State Legislature in S.B. 1. The new benefit amounts will be effective 07/01/98. Language in this section has also been modified and deleted to reflect the current methodology for computing the earned income disregard.

(DAR Note: S.B. 1 is found at 1998 Utah Laws 394 and will be effective July 1, 1998.)

SUMMARY: This rule changes the amount of monthly financial assistance that is paid to eligible households. The changes also modify the rule language to reflect the current methodology for computing the earned income disregard.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 35A-3-103

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None - the increase in the monthly financial assistance amounts is funded through the Federal Temporary Assistance for Needy Families (TANF) block grant funds.

◆ LOCAL GOVERNMENTS: None.

◆ OTHER PERSONS: This change increases the monthly financial assistance payment to households by 6%. The modification to the earned income disregard calculation simplifies the procedure and also results in a disregard of more of a household's earned income which results in a increased monthly financial assistance payment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

DIRECT QUESTIONS REGARDING THIS FILING TO: Shawn Potter at the above address, by phone at (801) 531-3783, by FAX at (801) 531-3785, or by Internet E-mail at spotter@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Robert C. Gross, Executive Director

R986. Workforce Services, Employment Development. R986-220. Financial Assistance Tables.

R986-220-2. [Grants] Financial Assistance and Current Need Standards.

TABLE
 [GRANTS] FINANCIAL ASSISTANCE AND CURRENT NEED STANDARDS
 AS LISTED BELOW ARE EFFECTIVE ~~[10/1/94]~~ 7/1/98

These figures are monthly

Household Size	Standard [Grant] Financial Assistance Base	Adjusted Standard Needs Budget	185% of Standard Budget
1	\$[246]261	\$329	\$608
2	[342]362	456	843
3	[426]451	568	1,050
4	[498]528	665	1,230
5	[567]601	757	1,400
6	[625]663	834	1,542
7	[654]693	873	1,615
8	[685]726	914	1,690
9	[717]760	957	1,770
10	[747]792	997	1,844
11	[778]825	1,038	1,920
12	[809]857	1,079	1,996
13	[840]890	1,120	2,072
14	[870]922	1,161	2,147
15	[902]956	1,203	2,225
16	[933]988	1,244	2,301

R986-220-4. Computation of Earned Income Disregards.

1. The department shall use the following calculation formula as listed in the next paragraph to determine the [30 and 1/3] earned income disregard.

2. [The name 30 plus 1/3 Disregard means \$30 plus 1/3 of the earned income not already disregarded. The amount is computed for each client individually rather than on the total household

earned income. These steps are followed applied in the order listed:

- a. ~~The \$90~~ A \$100 earned income disregard is deducted from client's total gross earned income.
- b. Next, ~~50%~~ 50% of the remainder is subtracted.
- ~~c. The remainder is divided by three.~~
- ~~d. \$30 is then added to the quotient.~~
- ~~e. The resultant figure equals \$30 and 1/3.~~

TABLE

EXAMPLE[\$]	[FULL-TIME]
Gross Earnings	\$819.00
Work Expense	[-90.00] -100.00
	[729.00] 719.00
Subtract 50% 50% of the remainder	[-30.00]
[Remainder] \$719.00/2 =	[\$699.00] -359.50
Divide the remainder by 3	\$699 / 3 = 233
Add to quotient	\$233.00
\$30	30.00
The answer equals 30 and 1/3	\$263.00
Remainder equals the countable earned income amount	\$359.50

KEY: ~~grants~~ financial assistance amount, income disregards*, need standard*
 [1995]1998 62A-9-101
 Notice of Continuation March 7, 1997

◆ ————— ◆

Workforce Services, Workforce Information and Payment Services

R994-315

Centralized New Hire Registry Reporting

NOTICE OF PROPOSED RULE
(New)

DAR FILE NO.: 21012
 FILED: 04/23/98, 17:19
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The purpose of this filing is to comply with Subsection 35A-7-104(4) which directs the Department to determine reporting procedures to allow employers to comply with the Act.

SUMMARY: This rule outlines the information employers are required to report, acceptable formats for reporting the information, and appropriate locations for reporting the information.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 35A-7-101 et seq.
FEDERAL MANDATE FOR THIS FILING: 42 U.S.C. 654(a) et seq. and Pub. L. No. 104-193

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** From 1997 General Legislative Session Fiscal Note to S.B. 64: "This legislation implements additional federal welfare reform requirements. Additional requirements in the Office of Recovery Services have been included in the Analyst's recommended building block for that agency. This includes funding for the federally required New Hire Registry. Impact on the State Court system is estimated at \$109,800 from the General Fund due to increased workload from additional filings and modifications to agreements. An additional \$30,000 will be needed for contract programming in FY 1998. It is estimated that some additional revenues will become available from these reforms. The Analyst estimates an increase of \$500,000 to the General Fund due to greater compliance with child support orders."
- ◆ **LOCAL GOVERNMENTS:** Local governments are only affected incidentally in their role as employers.
- ◆ **OTHER PERSONS:** There are between 250,000 and 725,000 new hires or rehires each year in Utah depending on the labor market. At an approximate cost of \$1 per new hire, the aggregate impact is between \$250,000 and \$725,000. (**DAR Note:** S.B. 64 is found at 1998 Utah Laws 169 and will be effective July 1, 1998.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance with this rule will cost employers approximately \$1 per new hire. This includes the cost of a diskette and postage. Costs may be lower if the employer submits multiple new hires on the same diskette or form or if information is faxed to the agency rather than mailed.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Workforce Services
 Workforce Information and Payment Services
 Fifth Floor
 140 East 300 South
 PO Box 45245
 Salt Lake City, UT 84145-0249, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Shawn Potter at the above address, by phone at (801) 531-3783, by FAX at (801) 531-3785, or by Internet E-mail at spotter@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Robert C. Gross, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.
R994-315. Centralized New Hire Registry Reporting.
R994-315-101. Authority.

This rule is authorized by 35A-7-101 et seq. Utah Code Ann. 1953.

R994-315-102. Definitions.

In addition to definitions included in 35A-7-102, this rule makes the following definition:

(1) Multi-state Employer: A multi-state employer is defined as an employer who has employees in two or more States and who transmits new hire reports magnetically or electronically.

R994-315-103. Reporting Formats.

Employers may submit information by paper, or by magnetic tape, cartridge, or diskette. Submittals should not be duplicated.

(1) Paper

Employers may mail or fax copies of any one of the following:

(a) the Utah New Hire Registry Reporting Form (form 6)

(b) the employee's W-4 (Employee's Withholding Allowance Certificate), the worksheet portions are not necessary.

(c) computer printouts or other printed information that provides all six of the mandatory data elements required by 35A-7-104 (1).

(2) Magnetic Media

Employers may submit their new hire information on magnetic tape, cartridge, or diskette. Magnetic media must be submitted according to specifications approved by the Department.

R994-315-104. Multi-state Employers.

(1) Multi-state employers have the option to report all new hires to a single state, chosen by the employer, in which the employer has employees. To exercise this option, the employer must designate one state for reporting new hires, transmit the report magnetically or electronically, and notify the Secretary of Health and Human Services in writing.

The letter of request should include the following information:

(a) Employer Federal ID Number (FEIN).

(b) Any other FEIN's under which the employer does business.

(c) Employer Company name, address and telephone number.

(d) The state to which the employer will report all workers.

(e) A list of states in which the employer employs workers.

(f) Name and phone number of person responsible for providing data.

KEY: new hire registry

June 16, 1998

35A-7-101 et seq.

42 U.S.C. 654(a) et seq.

Pub. L. No. 104-193



End of the Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (•••••) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends June 15, 1998. At its option, the agency may hold public hearings.

From the end of the waiting period through September 12, 1998, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by UTAH CODE Section 63-46a-6 (1996); and UTAH ADMINISTRATIVE CODE Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Insurance, Administration
R590-128
Unfair Discrimination Based on the
Failure to Maintain Automobile
Insurance (Revised)

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 20817
FILED: 05/01/98, 15:26
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The purpose of this rule is to identify certain practices which the commissioner finds are unfair and discriminatory.

SUMMARY: All changes are being made to Section R590-128-4. Only those changes that are substantive and are more than grammatical are mentioned here.

(DAR Note: The original proposed amendment upon which this change in proposed rule is based was published in the March 15, 1998, issue of the Utah State Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 31A-23-302

ANTICIPATED COST OR SAVINGS TO:
THE STATE BUDGET: None.
LOCAL GOVERNMENTS: None.
OTHER PERSONS: None.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Insurance Administration
3110 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at whitby@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 06/15/98.

THIS FILING MAY BECOME EFFECTIVE ON: 06/16/98

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-128. Unfair Discrimination Based on the Failure to Maintain Automobile Insurance. (Revised.)

.....

R590-128-4. Rule.

(1) The following are hereby identified as acts or practices which, when applied because of failure to maintain automobile insurance for a period of time prior to the issuance of an insurance policy, constitute unfair discrimination among members of the same class:

- (a) refusing to insure or refusing to continue to insure;
(b) limiting the amount, extent or kinds of coverage available;
(c) charging applicants different rates for the same coverage by either surcharging one applicant [for]who did not [having]have prior insurance or crediting another applicant [for]who did [having]have prior insurance; or
(d) designating the applicant as a non-standard, sub-standard, or otherwise worse than average risk for the purpose of placing the applicant in a specific company or rating tier.

(2) In the application of Subsection (1) the following shall apply:

(a) [An]an insurer may reject or surcharge an applicant if the insurer can demonstrate through driving records or other objective means including, but not limited to, a statement from the applicant, that the applicant has at any time in the immediately prior three years been operating a motor vehicle in violation of any state's compulsory auto insurance laws[-]; or

(b) [An]an insurer may reject or surcharge an applicant if the applicant represents that prior insurance existed, but fails to provide evidence to the insurer, or fails to assist the insurer in securing evidence that said prior insurance actually existed.

[e)](3) Inadvertent lapses in coverage of up to 30 days due to the applicant's [belief in and]reasonable reliance on information from an insurance agent or company that [he]the applicant was insured are not considered to be a failure to maintain automobile insurance for the purposes of this rule.

.....

KEY: insurance companies
1998
Notice of Continuation April 15, 1995
31A-23-302



NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (UTAH CODE Subsection 63-46a-7(1) (1996)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (••••) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule.

Emergency or 120-DAY RULES are governed by UTAH CODE Section 63-46a-7 (1996); and UTAH ADMINISTRATIVE CODE Section R15-4-8.

Human Services, Administration, Administrative Services, Licensing **R501-2** Core Standards

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 21083
FILED: 05/01/98, 14:43
RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Legislature amended Sections 62A-2-101 and 62A-2-106. The rules promulgated under these sections need to conform to the law.

SUMMARY: Section R501-2-1 provides that the Office will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas: (A) the administration and maintenance of client and service records; (B) staff qualifications; and (C) staff to client ratios. Section R501-2-14 changes the categories of service that the Office licenses. The Office no longer licenses categories of Comprehensive Mental Health, Comprehensive Substance Abuse, Driving Under the Influence, Educational Services, and Inpatient Treatment Services.

(DAR Note: A corresponding proposed amendment is under DAR No. 21084 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 62A-2-101 through 62A-2-121

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None.
- ❖LOCAL GOVERNMENTS: None.
- ❖OTHER PERSONS: Some agencies will no longer be licensed by the Office of Licensing to provide some services. Therefore they will no longer pay licensing fees for that category of service. This is a savings directly to providers. The approximate savings is \$2,450.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None. There is an aggregate savings of approximately \$2,450. This rule change requires no increase to licensees.

EMERGENCY FILING JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

Passage of H.B. 120 changed Section 62A-2-101, et. seq, which governs the Office of Licensing. There was not enough time between the signing of the Bill and the implementation of the legislation to promulgate a rule with the regular time frames.

(DAR Note: H.B. 120 is found at 1998 Utah Laws 358, and was effective May 4, 1998.)

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Administration, Administrative Services,
Licensing
Room 303

120 North 200 West
Salt Lake City, UT 84103, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Gayle G. Sedgwick at the above address, by phone at (801) 538-4235, by FAX at (801) 538-4553, or by Internet E-mail at hsadmin.hsadmin2.gsedgwic@state.ut.us.

THIS FILING IS EFFECTIVE ON: 05/04/98

AUTHORIZED BY: Reta D. Oram, Director

R501. Human Services, Administration, Administrative Services, Licensing.

R501-2. Core Standards.

R501-2-1. Definition.

Core Standards are the license requirements for Human Service Programs, as listed in R501-2-14. Where there is duplication of review by another oversight agency, the Office of Licensing, hereinafter referred to as Office, shall accept that documentation as proof of compliance. Pursuant to 62A-2-106, the Office will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas:

A. the administration and maintenance of client and service records; and

B. staff qualifications; and

C. staff to client ratios.

.....

R501-2-14. Categorical Standards.

In addition to Core Standards, Categorical Standards are specific regulations which must be met for the following:

~~[A. Comprehensive Mental Health Treatment Center,~~

~~B. Comprehensive Substance Abuse Program;]~~

~~[C.]~~ A. Child Placing Agencies,

~~[D.]~~ B. Residential Treatment;

~~E.]~~ B. Day Treatment,

C. Intermediate Secure Treatment Programs for Minors,

D. Outdoor Youth Programs,

~~[F.]~~ E. Outpatient Treatment,

~~[G.]~~ E. Outpatient Domestic Violence Perpetrator Treatment,

G. Residential Treatment,

H. Residential Support, and

I. Social Detoxification[.];

~~[J. Outdoor Youth Programs, and~~

~~K. Intermediate Secure Treatment Programs for Minors.]~~

R501-2-15. Single Service Program Standards.

Core Standards of the Office do not apply to single service programs.

Single services program standards are the regulations which must be met for the following:

~~[A. Driving Under the Influence, referred to as DUI, which standards are found in R544-4,~~

~~B.]~~ A. Adult Day Care, which standards are found in R501-13,

~~[C.]~~ B. Adult Foster Care, which standards are found in R501-17, and

~~[D.]~~ C. Child Foster Care, which standards are found in R501-12.

KEY: licensing, human services

~~[December 2, 1997]~~ May 4, 1998

62A-2-101 et seq.

Notice of Continuation September 2, 1997



Human Services, Administration,
Administrative Services, Licensing
R501-14
Criminal Background Screening

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 21081

FILED: 05/01/98, 14:40

RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Legislature amended Sections 62A-2-101 through 62A-2-121. The rules promulgated under these sections need to conform to the law.

SUMMARY: R501-14 provides for an initial and annual criminal background screening on licensees and persons associated with a licensee. Prior to issuing a license, all persons submit identifying information for a criminal background screening through the Division of Law Enforcement and Technical Services, Criminal Identification, within the Department of Public Safety. The rule outlines the procedure for submitting information for screening. The rules outlines the steps following screening, either approval or denial, and the right to a hearing.

(DAR Note: A corresponding proposed amendment is under DAR No. 21085 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 62A-2-101 through 62A-2-121

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None - The size and nature of workload should not be affected substantially by this change. All potential licensees and persons associated with licensees will continue to be checked by existing staff.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: In most instances, the cost of the FBI record will be less than the current cost of obtaining records from other states. Approximately 3,200 applicants per year are required to provide out-of-state criminal history records. Most out-of-state applicants need to provide record from between 1-3 states. The cost for each state record ranges from \$50 plus the cost of fingerprinting (\$5 - \$10) to no cost. The most common states we request records from are

California (\$32), Nevada (\$45), Idaho (\$5), and Arizona, which will not release a record, necessitating the need for the FBI record. The FBI costs \$24.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As described under "Other Persons," the newly required cost for an FBI record will be \$24 per out-of-state applicant. However, as previously described, in many cases this will be less than the prior practice requiring records from separate states.

EMERGENCY FILING JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

Passage of H.B. 120 changed Section 62A-2-101, et seq, which governs the Office of Licensing. There was not enough time between the signing of the Bill and the implementation of the Legislation to promulgate a rule within the regular time frames.

(DAR Note: H.B. 120 is found at 1998 Utah Laws 358, and was effective May 4, 1998.)

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Administration, Administrative Services,
Licensing
Room 303
120 North 200 West
Salt Lake City, UT 84103, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Gayle Sedgwick at the above address, by phone at (801) 538-4234, by FAX at (801) 538-4553, or by Internet E-mail at hsadmin.hsadmin2.gsedgwic@state.ut.us.

THIS FILING IS EFFECTIVE ON: 05/04/98

AUTHORIZED BY: Reta Oram, Director

R501. Human Services, Administration, Administrative Services, Licensing.

R501-14. Criminal Background Screening.

R501-14-1. Criminal Background Screening.

A. Authority

1. Pursuant to UCA 62A-2-120 and UCA 62A-4a-413, [The Utah Code, 62A-4a-413, requires that] a Bureau of Criminal Identification, [referred to as BCI,] screening shall be conducted on licensees and persons associated with a licensee [an owner, director, member of governing body, employee, provider of care, or volunteer] of a public or private agency or individual licensed by the Department of Human Services, referred to as DHS, to provide services for [to] children.

2. [The Utah Code, 78-30-3,5, requires that a BCI] Pursuant to UCA 78-30-3.5(2)(a), a criminal background screening shall be conducted as part of the Preplacement Adoptive Study.

3. The National Child Protection Act, Public Law 103-209, authorizes a state to request a nationwide background check for the purpose of determining whether a provider has been convicted of a

crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children.

B. Purpose

The purpose of the criminal background screening, referred to as CBS, as a part of the licensing process for DHS, is to protect children in licensed programs [care] from individuals who have been convicted of serious crimes, or individuals whose conduct or pattern of conduct is contrary to the safety and well-being of children.

R501-14-2. Definitions.

A. "Administrative Law Judge" means an employee of the DHS who acts as an independent decision maker who considers the evidence introduced at the hearing and renders a decision based solely on that evidence and all relevant law and policy, herein referred to as ALJ.

B. "Adult" means a person 18 years of age, or older.

~~C. "Adult Protective Services Worker" means an employee of the DHS who is designated to conduct abuse or neglect investigations of adults.~~

~~D. "Applicant" means a public or private agency or person applying for a license to provide direct service to children, disabled and functionally impaired adults.]~~

[E]C. "Authorized Worker" means the director or designee of a facility or an employee of DHS regional offices.

[F]D. "Authorized DHS Worker" means an employee of the Department of Human Services authorized to have access to OL and CBS information as determined by the Director, Office of Licensing, DHS.

[G]E. "Bureau of Criminal Identification" means the designated state agency including "terminal agency users" of the Division of [Law Enforcement]Criminal Investigation and Technical Services Division, within the Department of Public Safety, referred to as DPS, [LETS,] responsible to maintain criminal records in the State of Utah, herein referred to as BCI.

F. "Consumer" means an individual, i.e., client, resident, customer, etc., who receives services from a licensee.

~~H. "Certified Program" means programs or facilities certified to provide services by Regions of the Department of Human Services, Division of Child and Family Services, referred to as DCFS, offices and contracted by Division of Services for People With Disabilities, including, small group homes, supervised apartments, supported living, out-of-home respite, training assistance, supported employment, and social or recreation.~~

~~I. "Child Protective Service Worker" means an employee of the Department of Human Services who is designated to conduct abuse or neglect investigations of children:~~

~~J. "Covered Individual" means any person who owns, works in, or volunteers in a licensed facility providing direct services to children, or disabled and functionally impaired adults. Also, any person 18 years or over who resides in a home where home-based care is provided.]~~

G. "Direct supervision" means that the licensee or person associated with the licensee is never with a client without their supervisor present.

H. "Director" means the person responsible, as delegated by the governing body, for the technical and programmatic aspects of the program. This person should provide direct supervision of the day-to-day aspects of the program operation.

~~[K.]~~ "The Division of Aging and Adult Services" means the DHS Division responsible for administering and delivering services to aging and disabled adult residents of Utah, referred to as DAAS.

~~[E.]~~ "Department of Human Services" means the State Department authorized to provide human services, including licensing, herein referred to as DHS.

~~[M.]~~ "Department of Human Services/Criminal Background Screening Committee" means the committee designated by the Director of DHS to review criminal background information, herein referred to as DHS/CBS ~~Committee~~[committee].

~~[N.]~~ "Disabled Adult" means a person 18 years of age, or older, who meets the eligibility standards for adult services as established by the Utah Code, Title 62A-3-301(5).

~~[O.]~~ "The Division of Child and Family Services" means the DHS Division which operates regional human service offices ~~and which licenses home-based programs~~, herein referred to as DCFS.

~~[P.]~~ "The Utah Department of Public Safety" means the Department with the policy making functions and regulatory and enforcement powers pertaining to public safety, herein referred to as DPS.

~~[Q.]~~ "The Division of Services for People With Disabilities" means the DHS Division responsible for providing services for people with disabilities, herein referred to as DSPD.

~~[R.]~~ "Employee" means a person who performs services for a licensee in a paid or otherwise compensated capacity. ~~[a person who works in, or volunteers in a program to provide direct services for children, or disabled and functionally impaired adults in a licensed provider facility.]~~

~~[S.]~~ "Functional Impairment" means the inability to perform basic self-care functions, such as eating, dressing, and bathing, or instrumental activities of daily living, including home management activities, such as cooking, shopping, or cleaning, because of physical, mental, or emotional condition.

~~[T.]~~ "Functionally Disabled" means a physical or mental impairment that limits the individual's capacity for independent living.

O. "Frequent visitor" means an adult who visits on a recurring basis in a home where home based care is provided.

~~[U.]~~ "GRAMA" means the Government Records Access and Management Act that covers information access and privacy of provider files. Refer to ~~[section]~~UCA 63-2-101(2), Section 45, CFR 5, 1990, Part 2, Section 7 of the Social Security Act; and in the Federal Privacy Act of 1974.

Q. "Human services licensee or licensee" means a youth program, resource family home, or a facility or program that provides services, care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification licensed by the Office of Licensing.

~~[V.]~~ "Identifying information" means individual data including, but not limited to; name, all aliases, date of birth, social security number, and driver license. ~~[drivers license number,] or state identification card.~~ ~~[other photo identification.]~~

~~[W.]~~ "Licensed Program" means programs or facilities licensed to provide services by DHS ~~OL or Regional DCFS offices.~~

S. "Members of Governing Body" means the individuals who comprise the Board of Trustees, Directors or other body who has

the ultimate authority and responsibility for the conduct of the licensee.

~~[X.]~~ "Office of Administrative Hearings" means the office in DHS which conducts hearings according to the Utah Administrative Procedures Act, herein referred to as OAH.

~~[Y.]~~ "Office of Licensing" means the office in DHS, authorized by law, to license facilities and programs, herein referred to as OL.

V. "Owner" means anyone listed in the Articles of Incorporation, Limited Partnership, etc. who has a legal interest in or legal right to the possession and to direct the affairs of the program.

~~W. "Person associated with the licensee" means any owner, director, member of the governing body, employee, provider of care, or volunteer of human service licensee. Also, any person 18 years of age or older~~ ~~[or over]~~ who resides in a home or is a frequent visitor where home-based care is provided.

~~X. "Provider of care" means a person who provides direct services for licensee consumers.~~

~~[Z.]~~ "Provider" means a public or private agency, owner, director, member of governing body, employee, volunteer, or other individual having a license to provide services to children.

~~[AA.]~~ "Terminal Agency" means ~~an agency accessing Utah Criminal Justice information System, referred to as UCJIS, and provides service to its agency and other authorized agencies by agreement with respect to UCJIS data, herein referred to as TA. The Department of Human Services, Office of Licensing is a "Terminal Agency" established by a Terminal Agency Users Agreement.~~

~~[BB.]~~ "Terminal Agency Coordinator" means the representative of the TA appointed by the administrative head of the TA, herein referred to as TAC.

~~[CC.]~~ "Utah Computerized Criminal History Data Base" means the internal, computerized data bases maintained by BCI/DPS, herein referred to as UCCH Database.

~~[DD.]~~ "The Utah Criminal Justice Information System" means the various files containing information which assists law enforcement and other criminal justice agencies in the protection of life and property for the citizens of the State of Utah, herein referred to as UCJIS.

~~[EE.]~~ "Utah Social Services Delivery System Child Protective Services/Adult Protective Services Data Bases" means the internal, computerized data bases maintained by DHS as required by Section 62A-4a-116 and 62A-3-311.1, herein referred to as USSDS CPS/APS.

AA. "UAPA" means the Utah Administrative Procedures Act as found in UCA 63-46b-1 through UCA 63-46b-21, herein referred to as UAPA.

~~[FF.]~~ "Volunteer" means a person other than a parent or guardian of a child or an adult receiving care in the facility, who performs services for a ~~[licensed facility]~~ licensee in a non-paid capacity.

R501-14-3. Procedure ~~[BCF]~~for Criminal Background Screening.

A. All proposed ~~[employees, owners, director, members of governing body, providers of care, and volunteers or applicants or providers]~~ licensees and persons associated with the licensee who are licensed to provide services ~~[to]~~for children, shall submit a

~~[BCI/USSDS Informed]~~ Consent and Release of Liability and Request for Background Screening form to the DHS OL for criminal background screening. Each licensee and person associated with the licensee~~[applicant]~~ will attach a copy of one photo identification issued by a governmental agency, either a driver license, or a state issued identification card,~~[such as drivers license, state issued I.D., or U.S. Passport,]~~ and their Social Security number. The Utah State governmental identification must show an address identical to the ~~[BCI/USSDS]~~ Consent and Release of Liability and Request for Background Screening form, to establish residency.

~~[B. All employees and prospective employees of the Department of Human Services, Division of Child and Family Services shall submit their fingerprints for criminal background screening.~~

~~—C]B.~~ Persons 18 years of age or older~~[or over]~~ residing in the home or frequent visitors of ~~[an applicant to provide]~~ home based care must also comply with this requirement.

1. ~~[An applicant]~~A licensee shall submit the identifying information to DHS for criminal background screening prior to hiring a new employee. The licensee assumes all liability if an individual is hired prior to receiving the criminal background screening approval. The licensee is also responsible for directly supervising individuals hired before receiving the required background screening approval. In the case of emergency hiring, ~~[an applicant]~~a licensee shall immediately submit the identifying information to DHS for ~~[CBS]~~criminal background screening.

2. An ~~[applicant]~~application for a new license will not be approved until the criminal background screenings have~~[screening has]~~been completed. For renewal licenses in case of emergency or need for immediate placement of a child, a conditional license may be issued for a maximum of thirty days to allow for the criminal background screening to be completed.

3. ~~[An applicant]~~A licensee applying for ~~[an annual]~~license renewal will have thirty days prior to license expiration to submit the identifying information of all licensees and persons associated with the licensee~~[current employees]~~ to DHS for criminal background screening.

4. A home-based licensee~~[applicant]~~ applying for ~~[an annual]~~ license renewal will have thirty days prior to license expiration to submit to DHS for criminal background screening the identifying information on all persons associated with the licensee.~~[residing in the home who are over eighteen.]~~

C. When the OL receives the identifying information from the applicant licensee, the OL will access the UCCH Database to conduct the criminal background screening for a determination of whether or not the applicant has been convicted of any crime under the laws of the State of Utah.

D. When a ~~[covered individual has]~~licensee or person associated with a licensee has not lived in Utah for the last five consecutive years,~~[less than five years,]~~ or has unexplained gaps in work or residence record, the request for a FBI national criminal history record check will be made by OL. The licensee or person associated with the licensee shall be responsible to provide the OL with completed fingerprint cards and a cashier's check or money order for the cost of the nationwide check within 10 days after receiving the request. Licensees or persons associated with the licensee may also be required to provide the OL with a criminal history from the states they have lived in, upon request by the OL.

The person associated with the licensee is responsible for all costs associated with obtaining the criminal history. The criminal history shall be provided within 90 days of the date of the OL request. For persons associated with the licensee who are citizens of foreign countries and have not lived in Utah for the last five consecutive years, the OL may accept a photo copy of both the front and back of U.S. Department of Justice Immigration and Naturalization Service resident alien card to verify the screening was accomplished prior to entry into the United States. The OL may also accept a copy of a criminal history from the country of citizenship to determine if the individual has been convicted of any crime. Either a copy of a resident alien card or criminal history from the foreign country must be submitted to the OL within 90 days after requested by the OL.

E. If a licensee or person associated with the licensee does not provide the requested information and fees within the time frames specified, their application will be denied and they will not be eligible to provide services for the program or children.~~[criminal background screening shall also be made to the states or countries of former residence, or a nationwide BCI as determined by the OL. The request for checks will be made by OL. The covered individual shall be responsible to provide the OL with a completed criminal background screening clearance from the State or Country of former residence, in accordance with their established procedure. The OL may accept a photo copy of both the front and back of U.S. Department of Justice Immigration and Naturalization Service form INS-551 or INS-151, referred to as a green card, to verify the screening was accomplished prior to entry into the United States.]~~

~~[E]E.~~ An applicant requesting initial licensure for a program serving children, who has lived or operated programs in Utah for less than five years, may be screened through the nationwide FBI~~[BCI]~~ process.

G. Licensees or persons associated with the licensee who have complied with the above requirements, may continue to work under direct supervision pending the outcome of the criminal background screening.

H. If a licensee or person associated with the licensee has an arrest record without a final disposition, including, but not limited to the following: warrant issued, plea held in abeyance, court date pending, diversion agreement, adjudication withheld, the background screening consent and release of liability will be returned to the licensee or authorized worker. The OL will not process criminal background screenings until there is a final disposition.

~~[—F. When the OL receives the identifying information from the applicant the OL will access the UCCH Database to conduct the BCI criminal background screening for a determination of whether or not the applicant has been convicted of any crime under the laws of the State of Utah.]~~

R501-14-4. Results of Screening.

When the criminal background screening is completed, OL will take the following action:

A. Approval:

If a licensee or person associated with the licensee is found to have no criminal history record, or if the only offenses are misdemeanors or infractions not involving domestic violence, lewdness, battery, offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person,

pornography, prostitution, or any type of sexual offense, and the conviction date is older than five years, a notice will be sent to the authorized DHS worker stating that the person is approved to provide services for the licensed program serving[~~to~~] children.

B. Denial:

1. A licensee or person associated with a licensee convicted of a felony shall not be given a background screening clearance required[granted a license or allowed to volunteer services or be employed] to provide services for the licensed program serving children.

2. A licensee or person associated with a licensee convicted of a misdemeanor or infraction involving an offense identified as domestic violence, lewdness, battery, or an offense identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, shall not be given a background screening clearance[granted a license or allowed employment] to provide, or volunteer, services for the licensed program serving children.

3. If a licensee or person associated with a licensee has been convicted within the last five years of a misdemeanor or infraction not listed in paragraph 2 above, [not involving offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense,] a further study of the criminal and court records will be required. A comprehensive review of the individual circumstances shall be conducted by the DHS/CBS Committee.

4. If a licensee or person associated with a licensee has a criminal history record that indicates there are misdemeanor or infraction offenses, a misdemeanor or infraction conviction, conduct, or pattern of conduct, or failure to disclose a criminal conviction on the Consent and Release of Liability and Request for Background Screening form, it may result in a denial of a criminal background clearance. [a license, employment, or providing volunteer services.] [The application will require further] Further study of the criminal and court records by the DHS/CBS Committee will be conducted. [~~A completed fingerprint card must be submitted by the applicant to facilitate the review.~~]

[~~a. The OL will send a notice to the authorized worker requesting a fingerprint card, waiver and fee to be submitted to DPS BCI by OL.~~

[~~b. The person shall be fingerprinted either by the local law enforcement agency or an agency approved by law enforcement.~~

[~~c. DPS BCI will submit the results and cards to OL. Simultaneously the DHS/CBS committee will review the misdemeanor offenses within the last five years, to determine whether or not the person shall be approved or denied.~~

[~~5. Procedure for Obtaining and Processing Fingerprint Cards:~~

[~~a. The required BCI card must be obtained from OL, or DPS, because these cards are stamped with DHS OL. Use of other cards may result in difficulties in completing the BCI screening, which can cause a loss of license or employment.~~

[~~b. The fingerprinted card, waiver, and the fee, in the form of a money order or cashiers check made payable to Utah DPS BCI, shall be sent to DHS for processing. This shall be completed by the covered individual.~~

[~~c. DPS will send fingerprint cards and screening information to the OL.~~]

5. If a licensee or person associated with a licensee may have a criminal record, the OL may send a notice to the licensee or

authorized worker requesting a fingerprint card and fee to be submitted to the OL within 72 hours after receiving the notice.

a. The required fingerprint card must be obtained from OL because these cards are stamped with DHS OL. Use of other cards may result in difficulties in completing the BCI screening, which may cause a loss of license or employment.

b. The person shall be fingerprinted either by the local law enforcement agency or an agency approved by law enforcement.

c. The fingerprinted card and the fee, in the form of a money order or cashier's check made payable to Utah DPS BCI, shall be sent to DHS OL for processing. This shall be completed by the person associated with a licensee. Failure to submit the fingerprint card and fee will result in the background screening application being denied and the person associated with the licensee will not be eligible to provide services for children.

d. The fingerprint card and fee will be submitted to the DPS BCI by the OL.

e. DPS BCI will submit the results and cards to OL.

f. The DHS/CBS committee will concurrently review the misdemeanor and infraction offenses within the last five years to determine whether or not the licensee or person associated with a licensee shall be approved or denied.

R501-14-5. DHS/CBS Committee Review.

A. A DHS/CBS Committee composed of members designated by the Director of DHS representing the various Divisions of DHS shall conduct a comprehensive review of the criminal background screening results at least twice a month.

B. The Committee shall, at a minimum, review the date and the type of offense or conviction, written documentation, [and] the legal status of the individual, conduct or pattern of conduct, and if the criminal conviction was disclosed on the Consent and Release of Liability and Request for Background Screening form.

C. The committee shall maintain a record of the review to include the findings of fact, conclusions of each case, and a copy of the [BCI]UCCH record and fingerprint card, when appropriate.

R501-14-6. Results of the DHS/CBS Committee Review.

A. Approval: If based upon DHS/CBS committee review, a decision is reached to approve [an individual, a license] a licensee or person associated with a licensee, a criminal background screening clearance shall be issued or [renewed].

B. Denial:

1. If, based upon DHS/CBS Committee review of the circumstances, there exists credible evidence that the licensee or person associated with a licensee, [employee, volunteer, owner, director, or an adult living in a licensed home] poses a threat to the safety and health of the consumers being served by the human service program, a criminal background screening clearance shall not be issued. [license shall be denied or revoked.]

2. If a decision is reached to deny, or revoke, proper legal notice of agency action will be sent to the licensee [provider] or applicant by the DHS or the OL. [Authorized Regional DHS Office or worker.]

3. The licensee or person associated with the licensee [provider or applicant] may request a hearing in accordance with the UAPA, UCA 63-46b.

R501-14-7. Conviction After Licensure.

If a licensee or person associated with the licensee is convicted of a felony, misdemeanor, or infraction ~~covered individual, who must clear the criminal background screening, is convicted of a felony or misdemeanor~~ after a license is issued, the licensee ~~license holder~~ has five working days to notify OL. Failure to notify will result in automatic, immediate suspension of the license. When notice of a conviction is received, OL will respond as stated in UCA 501-14-3, et seq. ~~procedure section of this policy.~~

R501-14-8. Confidentiality.

A. The results of the criminal background screening shall only be released to individuals approved by the Department of Human Services who have signed a ~~Department of Public Safety~~ Non-Disclosure statement, which includes acknowledging the existence or non-existence of a criminal history by an Authorized DHS Worker. The information will be disclosed according to ~~Utah Code~~ UCA 53-5-214.

B. The results of the criminal background screening will not be given over the telephone. The information must be requested in writing with the proper releases. ~~to comply with GRAMA according to 63-2-201(2);~~

C. All documents relating to a criminal background screening must be maintained and stored as confidential material. When determined the document is no longer needed it must be destroyed, in a manner that secures its privacy, i.e., shredded, burned, etc.

R501-14-9. Retention of Identifying Information, Fingerprint Cards, and ~~BCI~~ Criminal Background Screening.

A. Identifying Information ~~Fingerprint Cards~~, and criminal background screening results shall be retained by the licensee for the duration of the person's association with the licensee. ~~Screening results cannot be shared, transferred, or further disseminated to any other licensee or individual.~~ ~~applicant's employment.~~

B. Identifying information, fingerprint cards, and criminal background screening results of persons whose background screening have been denied, and fingerprint cards for persons approved, who have been denied a license or employment, shall be retained in the OL, pursuant to UCA 63-2-101, et seq.

R501-14-10. Expungement.

A. Licensees and persons ~~Persons~~ associated with a licensee whose background screening applications have been denied licensing or employment, due to a criminal record, may request further information or expungement of the record through the DPS BCI pursuant to UCA 77-18-2.

~~A~~B. When a criminal record is expunged, the licensee or person associated with a licensee may re-apply for a background screening clearance, ~~license or for employment with a licensed provider.~~

~~B~~C. Information regarding procedures for criminal record expungement may be obtained from BCI. The costs of expungement are the responsibility of the licensee or person associated with the licensee. ~~individual.~~

~~C. The provider or applicant has no right to a Utah Administrative Procedures Act, herein referred to as UAPA, unless there is a disputed issue of fact with the DHS policy.~~

R501-14-11. Administrative Hearing.

A. A licensee or person associated with the licensee, who has been convicted of a felony, has no right to a UAPA hearing.

~~A~~B. A licensee or person associated with the licensee ~~provider or applicant~~ who has been denied a license or employment based upon a misdemeanor or infraction conviction may request a hearing in accordance with the UAPA. ~~An individual~~ A licensee or person associated with the licensee requesting a hearing may continue to work under direct supervision until the hearing decision is issued. The person associated with the licensee or a licensee has no right to a UAPA hearing, unless there is a disputed issue of fact with the DHS policy.

~~A~~C. When action to deny, revoke, or suspend a license is based upon a review by the DHS/CBS Committee and new evidence not considered by the committee is introduced at ~~at~~ the hearing, the committee's representative may request that the case be remanded to the committee to consider the new evidence.

1. If the committee determines denial, revocation, or suspension is still warranted after further review, the committee chairperson will notify both the person associated with the licensee or the licensee ~~applicant~~ and the OAH. The ALJ may then reconvene the hearing if necessary to complete the record. A final decision will be issued based on all of the evidence in the record.

~~B~~2. If, after reviewing the new evidence, the committee recommends licensure, the OL ~~committee chairperson shall advise the licensuror. The licensuror~~ will then send an appropriate notice to the licensee ~~applicant~~ with a copy to OAH. After receiving notice that the license in dispute has been granted, OAH will close it's files without issuing a decision.

~~**R501-14-12. Certified and Exempt Facilities.**~~

~~A. Facilities or covered individuals which are certified rather than licensed by DCFS, DAAS, or DSPD must comply with the procedures as outlined above.~~

~~B. Facilities and persons exempt from licensure or certification are exempt from the criminal background screening requirements.~~

KEY: licensing, human services
~~February 3, 1997~~ **May 4, 1998**

62A-2-120
62A-4a-413



Human Services, Administration,
 Administrative Services, Licensing

R501-18

Abuse Background Screening

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 21082
 FILED: 05/01/98, 14:40
 RECEIVED BY: MB

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Legislature amended Sections 62A-2-101 through 62A-2-121. The rules

promulgated under these sections need to conform to the law.

SUMMARY: R501-18 provides for an annual screening of licensees and persons associated with the licensee. This rule outlines the procedure for that screening. Prior to issuing a license, all persons associated with the licensee shall submit identifying information for abuse screening. All persons associated with a licensee shall submit identifying information for abuse screening before being hired. If the licensee or person associated with the licensee is identified as a substantiated perpetrator, it shall require further review by the Department of Human Services. If a licensee or person associated with the licensee is denied clearance, a hearing may be requested. Information shall remain confidential and retained according to the Government Records Access and Management Act (GRAMA) requirements.

(DAR Note: A corresponding proposed new rule is under DAR No. 21086 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 62A-2-101 through 62A-2-121

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None. The size and nature of workload should not be affected substantially by this change. All potential licensees and persons associated with licensees will continue to be screened by existing staff.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: Unknown. Pursuant to Section 62A-2-121, potential costs could include time off work and lost wages.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule filing does not substantially change prior practice in screening procedures for individuals. Potential costs, including time off work and lost wages continue to exist because of Section 62A-4a-413 and with the newly enacted Section 62A-2-121.

EMERGENCY FILING JUSTIFICATION: REGULAR RULEMAKING PROCEDURES would place the agency in violation of federal or state law.

Passage of H.B. 120 changed Section 62A-2-101, et seq, which governs the Office of Licensing. There was not enough time between the signing of the Bill and the implementation of the Legislation to promulgate a rule within the regular time frames.

(DAR Note: H.B. 120 is found at 1998 Utah Laws 358, and was effective May 4, 1998.)

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Administration, Administrative Services,
Licensing
Room 303
120 North 200 West
Salt Lake City, UT 84103, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Gayle G. Sedgwick at the above address, by phone at (801) 538-4235, by FAX at (801) 538-4553, or by Internet E-mail at hsadmin.hsadmin2.gsedgwick@state.ut.us.

THIS FILING IS EFFECTIVE ON: 05/04/98

AUTHORIZED BY: Reta Oram, Director

R501. Human Services, Administration, Administrative Services, Licensing.

R501-18. Abuse Background Screening.

R501-18-1. Management Information System.

A. Authority

1. Pursuant to UCA 62A-2-121 and UCA 62A-4a-116, a review of the Management Information System shall be conducted of all licensees and persons associated with the licensee as part of the initial and annual licensing process.

2. Pursuant to UCA 62A-3-311.1 a screening of licensees and persons associated with the licensee shall be conducted through the Adult Protective Services Data Base.

B. Purpose

The purpose of screening, as a part of the licensing process for the Department of Human Services, is to protect children and vulnerable adults from individuals who may have committed acts of abuse, neglect, or exploitation of a child or vulnerable adult.

R501-18-2. Definitions.

A. "Administrative Law Judge" means an employee of the DHS who acts as an independent decision maker who considers the evidence introduced at the hearing and renders a decision based solely on that evidence and all relevant law and policy, herein referred to as ALJ.

B. "Adult" means a person 18 years of age, or older.

C. "Adult Protective Services Worker" means an employee of the Department of Human Services who is designated to conduct abuse or neglect investigations of adults.

D. "Authorized Worker" means the director or designee of a facility or an employee of Department of Human Services.

E. "Authorized DHS Worker" means an employee of the Department of Human Services authorized to have access to the management information system as determined appropriate by the Director, Office of Licensing, Department of Human Services.

F. "Child Protective Service Worker" means an employee of the Department of Human Services who is designated to conduct abuse or neglect investigations of children.

G. "Consumer" means an individual, i.e., client, resident, customer, etc. who receives services from a licensee.

H. "Direct supervision" means that the licensee or person associated with the licensee is never with a client without their supervisor present.

I. "Director" means the person responsible, as delegated by the governing body, for the technical and programmatic aspects of the program. This person should provide direct supervision of the day-to-day aspects of the program operation.

J. "The Division of Aging and Adult Services" means the DHS Division responsible for administering and delivering services for

aging and disabled adult residents of Utah, herein referred to as DAAS.

K. "Department of Human Services" means the State Department authorized to provide human services, including licensing, herein referred to as DHS.

L. "The Division of Child and Family Services" means the office of DHS, which operates regional human service offices, herein referred to as DCFS.

M. "The Division of Services for People With Disabilities" means the DHS Division responsible for providing services for people with disabilities, herein referred to as DSPD.

N. "Employee" means a person who performs services for a licensee in a paid or otherwise compensated capacity.

O. "Frequent Visitor" means an adult who visits on a recurring basis in a home where home based care is provided.

P. "GRAMA" means the provisions of the Government Records Access and Management Act that provides for and covers information access and privacy of provider files, as found in UCA 63-2-101, et.seq.

Q. "Human services licensee" or "licensee" means a youth program, resource family home, or a facility or program that provides services, care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification licensed by the Office of Licensing.

R. "Identifying information" means individual data including, name, date of birth, social security number, and a copy of a driver license, or state identification card, and all aliases.

S. "Management Information system" means the part of the DCFS management information system developed for licensing purposes in accordance with UCA 62A-4a-116 and the Adult Protective Services Database identified in UCA -3-311.1 herein referred to as "management information system"

T. "Member of a Governing Body" means the individuals who comprise the Board of Trustees, Directors or other body who has the ultimate authority and responsibility for the conduct of the licensee.

U. "Owner" means anyone listed in the Articles of Incorporation, Limited Partnership, etc. who has a legal interest in or the legal right to the possession and to direct the affairs of the program.

V. "Office of Administrative Hearings" means the office in DHS which conducts hearings according to the Utah Administrative Procedures Act, herein referred to as OAH.

W. "Office of Licensing" means the office in DHS, authorized by law, to license facilities and programs, herein referred to as OL.

X. "Person Associated with the Licensee" means any owner, director, member of the governing body, employee, provider of care, or volunteer of a human service licensee. Also, any person 18 years or older who resides in a home or frequent visitor to a home where home based care is provided.

Y. "The Provider of Care" means a person who provides direct services for licensee consumers.

Z. Provider" means a public or private agency, owner, director, member of governing body, employee, volunteer, or other individual having a license to provide services to children.

AA. "UAPA" means the Utah Administrative Procedures Act as found in UCA 63-46b-1 through UCA 63-46b-21, herein referred to as UAPA.

BB. "Volunteer" means a person other than a parent or guardian of a child or vulnerable adult receiving care in the facility, who performs services for a licensed facility in a non-paid capacity.

CC. "Vulnerable Adult" means a disabled adult as defined in UCA 62A-3-301 (5); any person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions concerning his person, or is unable to care for his own personal safety or provide necessities such as food, shelter, clothing or medical care, without which physical injury or illness may occur.

R501-18-3. Procedure for Abuse Background Screening.

A. Prior to hiring an individual, human service programs required to be licensed by DHS shall submit identifying information, including the names, date of birth, social security number, and driver's license or state identification card of all licensees and all persons associated with the licensee. Requests for clearance shall also be resubmitted annually thereafter. The screening will search for a history of abuse, neglect or exploitation of children or vulnerable adults.

B. Human service programs which are home based shall also submit identifying information including, the names, date of birth, social security number and a copy of the driver license or state identification card of all licensees and persons associated with the licensee for an initial and annual screening of the Management Information System to search for a history of abuse, neglect or exploitation of children or vulnerable adults.

C. If a licensee hires an individual without having the abuse background screening approval, the licensee assumes all liability and is responsible for directly supervising all individuals who have not received the required abuse background screening approval.

R501-18-4. Results of Screening.

A. Approval:

If the name of the licensee or person associated with the licensee does not appear on the management information system, the abuse background screening shall be cleared to provide services in the licensed DHS facility, program, or home serving children or vulnerable adults. Approval is only applicable to this specific facility, program, or home.

B. Comprehensive Review:

If the licensee or person associated with the licensee is identified in the Management Information System as a perpetrator of abuse, neglect or exploitation of children or vulnerable adults, their abuse background screening shall require further review by the DHS in accordance with R501-18-5.

R501-18-5. DHS Comprehensive Review.

A. A comprehensive review shall be conducted by the DHS.

B. The review shall seek to obtain the following information, including input regarding mitigating circumstances:

1. What is the nature of the abuse or neglect?
2. How long ago did the incident occur?
3. What was the severity of the abuse or neglect?
4. Was legal action taken?
5. What steps have been taken to remedy the situation?

6. Based upon the information available, does this person pose a threat to the safety and well-being of consumers of the licensee?

7. The review may also seek additional information from the applicant and other individuals, including all enforcement personnel who completed the investigation and the investigative worker.

C. The DHS shall maintain a record of the review to include the findings of fact and the conclusions of each case.

R501-18-6. Results of the DHS Review.

A. Approval:

1. If the DHS review determines that the licensee or person associated with the licensee does not pose a threat to consumers, the abuse background screening shall be approved.

B. Denial:

1. If, based upon DHS review of the circumstances, there exists credible evidence that the licensee, person associated with the licensee, or person living in the home or frequent visitor to the home poses a threat to the safety and health of the consumers being served by the human service licensee, an abuse background screening shall not be approved.

2. A Notice of Agency Action, herein referred to as NAA, will be sent to the licensee and the person associated with the licensee stating that the application for a abuse background screening approval has been denied.

a. In the case of out of home care, if the provider or applicant is terminated or dismissed within 24 hours, a license may continue.

b. If the licensee or person associated with the licensee is an adult residing in a home or a frequent visitor to a home where home based care is offered, the Office of Licensing shall not issue a license.

R501-18-7. Administrative Hearing.

A licensee or person associated with the licensee who is denied approval may request a hearing within 10 days in accordance with UAPA. The licensee or person associated with the licensee have no right to a UAPA hearing unless there is a disputed issue of fact with the DHS policy.

A. Status Pending the Hearing Results:

1. A licensee or person associated with the licensee requesting a hearing may continue to work under direct supervision until the hearing decision is issued.

2. If the licensee or person associated with the licensee is unable to work under direct supervision, a NAA shall be sent to the licensee stating that their current license has been placed on conditional status pending the results of the hearing.

3. If a person 18 or older residing in a home or a frequent visitor to a home where home based care is provided requests a hearing, a NAA shall be sent to the licensee stating that their current license has been placed on conditional status pending the outcome of the hearing and the person 18 or older living in the home or frequent visitor must never be present when consumers being served by the licensee are in the home pending the hearing decision.

4. The NAA must be posted in a conspicuous place where parents, consumers, or the public will obviously see and be able to read the notice. Programs with multiple service locations will post applicable notices at each of those locations. The Office of Licensing may also notify parents or the public directly, or require the facility or program to do so.

B. Participants of the DHS review shall be available to testify at the hearing.

1. When action to deny, revoke, or suspend a license or deny an abuse background screening is based upon the DHS review, and new evidence not considered by the DHS review is introduced at the hearing, the DHS review representative may request that the case be remanded to the DHS to consider the new evidence. If the DHS determines denial, revocation, or suspension is still warranted after further review, the DHS will notify both the licensee, person associated with the licensee, and the OAH. The OAH may then reconvene the hearing if necessary to complete the record. A final decision will be issued based on all of the evidence in the record.

2. If, after reviewing the new evidence, the DHS recommends that the abuse background screening be approved, the DHS shall advise the licensee and person associated with the licensee. The DHS will then send an appropriate notice to the licensee and person associated with the licensee and a copy to OAH.

R501-18-8. Referral After Licensure.

If a licensee or person associated with a licensee providing services to the program serving children or vulnerable adults who must obtain the abuse background screening approval is substantiated for adult or child abuse, neglect, or exploitation after receiving the abuse background approval, the licensee has five working days to notify the OL. Failure to notify may result in automatic, immediate suspension of the license. When notice of a substantiated abuse record is received, the OL will respond as stated in R501-18-5 above.

R501-18-9. Confidentiality.

The information contained on the Management Information System is confidential and shall only be released as authorized by UCA 62A-4a-412 for children or UCA 62A-3-311.1 for adults.

A. The information in the Management Information System may only be released to individuals approved by the DHS in accordance with UCA 62A-4a-412 or UCA 62A-3-311.1.

B. The information in the Management Information System will not be given over the telephone. The information must be requested in writing with the proper releases.

C. All documents relating to an abuse background screening must be maintained and stored in accordance with GRAMA.

KEY: licensing, human services

May 4, 1998

62A-2-101 et seq.



End of the 120-Day Rules Section

FIVE-YEAR REVIEW NOTICES OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF CONTINUATION; or amend the rule by filing a PROPOSED RULE and by filing a NOTICE OF CONTINUATION. By filing a NOTICE OF CONTINUATION, the agency indicates that the rule is still necessary.

NOTICES OF CONTINUATION are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules.

NOTICES OF CONTINUATION are effective when filed.

Five-Year Review NOTICES OF CONTINUATION are governed by UTAH CODE Section 63-46a-9 (1996).

Environmental Quality, Radiation Control **R313-15** Standards for Protection Against Radiation

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21038
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-1-106(1) allows for creation of the Radiation Control Board within the Department of Environmental Quality. Subsection 19-3-104(3) provides that the Board may make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard and to meet the requirements of federal law relating to radiation control.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This has not been a controversial rule neither during nor since the last five-year review. A substantial review of the rule was completed and changes were made effective March 20, 1998. During the public comment period, an individual commented on the requirements for determining the radiation dose to an embryo/fetus. The comments led to a correction for a rule citation given in the subsection. The individual also recommended that changes accepted by the Utah Radiation Control Board concerning reports of stolen, lost, or missing licensed or registered sources of radiation be repealed and replaced by the previous requirements. The Board accepted

the comments and acted accordingly. Review by the Division of Radiation Control recommends continuation of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it establishes the standards for protection against ionizing radiation. The requirements are necessary to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so that the total radiation dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed established standards for protection against radiation. The rule is also needed to meet the requirements of federal law relating to radiation control.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Radiation Control
State of Utah Office Park, Bldg. 2
168 North 1950 West
PO Box 144850
Salt Lake City, UT 84114-4850, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Craig W. Jones at the above address, by phone at (801) 536-4250, by FAX at (801) 533-4097, or Internet E-mail at cjones@deq.state.ut.us.

AUTHORIZED BY: William J. Sinclair, Executive Secretary

EFFECTIVE: 04/30/98



**Environmental Quality, Solid and
Hazardous Waste
R315-307
Landtreatment Disposal Standards**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION
DAR FILE NO.: 20999
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-307 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. No substantive changes have been made in the rule and no comments have been received since the effective date of the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments have been received on the rule. For the protection of human health and the environment, Rule R315-307 should be continued since it specifies the standards for performance, design, operation, and maintenance of a landtreatment disposal facility. Also, the rule must be continued for the State to retain its U.S. Environmental Protection Agency (EPA) approved status.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadsworth@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/20/98

◆ ————— ◆
**Environmental Quality, Solid and
Hazardous Waste
R315-308
Ground Water Monitoring
Requirements**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION
DAR FILE NO.: 21000
FILED: 04/20/98, 11:01
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA Approved State and have primacy in the operation and enforcement of the solid waste program. Also,

an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-308 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has been changed several times since its effective date to include applicable changes that have been made in the "Utah Solid and Hazardous Waste Act" and/or promulgated by EPA, or to clarify portions of the rule. Several comments, in support of the rule changes, have been received during the rulemaking process to make changes in the rule. The comments that were received were in support of changing the effective dates of the rule to match the effective dates which were extended by a change in the EPA rule (40 CFR 258). Comments were also received that supported the change in the rule which allows alternative methods for the testing of ground water samples as long as certain standards of performance are met.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule. For the protection of human health and the environment, Rule R315-308 should be continued since it specifies the standards for performance, design of wells, collection of samples, and testing of samples for the ground water monitoring programs at solid waste disposal facilities. Also, the rule must be continued for the State to retain its U.S. Environmental Protection Agency (EPA) approved status.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
 Solid and Hazardous Waste
 Cannon Health Building
 288 North 1460 West
 PO Box 144880
 Salt Lake City, UT 84114-4880, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
 Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/20/98



**Environmental Quality, Solid and
 Hazardous Waste
 R315-309
 Financial Assurance**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21001
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the operation of landfills (40 CFR 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-309 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has been changed several times since its effective date to include applicable changes that have been made in the "Utah Solid and Hazardous Waste Act" and/or promulgated by EPA, or to clarify portions of the rule. Several comments have been received during the rulemaking process to make changes in the rule. Comments were received in support of changing the effective dates of the rule to match the effective dates which were extended by a change in the EPA rule (40 CFR 258). Comments were received which opposed the

establishment of a standby trust to administer the funds from a surety bond in the case of default by the owner or operator of a landfill. The Division of Solid and Hazardous Waste responded to these comments by explaining that the establishment of a standby trust, when a surety bond is used as the financial assurance mechanism for closure at a landfill, is a requirement of EPA and cannot be changed in the Utah rules. The rule change, which was open for public comment at that time, was to require the standby trust to follow the same procedures for the release of funds as are used in the regular trust that may serve as a financial assurance mechanism. One commenter suggested that a time limit be set for the review by the Executive Secretary of a request for the release of funds from a trust. The Division responded by explaining that this point was not open for public comment but that the suggestion was well taken and would be acted upon. The rule was later changed to require the Executive Secretary to act upon a reimbursement request within 30 days of receiving the request. One commenter felt that the Utah rule on financial assurance may not contain all of the EPA requirements. The Division responded by explaining that the Utah rule contains all of the requirements of the EPA rule and was reviewed and approved by EPA. Also, the rule takes advantage of the increased flexibility that is allowed to EPA approved states. When ever the EPA rule is changed, the Utah rule will be changed to incorporate any new requirements.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. Rule R315-309 should be continued since it specifies the requirements and the mechanisms for financial assurance to cover closure and post-closure care costs at solid waste disposal facilities. Also, the rule must be continued for the State to retain its U.S. Environmental Protection Agency (EPA) approved status.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
 Solid and Hazardous Waste
 Cannon Health Building
 288 North 1460 West
 PO Box 144880
 Salt Lake City, UT 84114-4880, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
 Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/20/98

Environmental Quality, Solid and Hazardous Waste **R315-310** Permit Requirements for Solid Waste Facilities

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21002
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the siting, design, and operation of landfills (40 CFR 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-310 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has been changed several times since its effective date to include applicable changes that have been made in the "Utah Solid and Hazardous Waste Act" and/or promulgated by EPA, or to clarify portions of the rule. Some comments have been received during the rulemaking process to make changes in the rule. Comments were received that opposed the deletion of the requirement to have a professional engineer sign the plans and drawings that are to be submitted with the permit application for a Class IV Landfill. The Division of Solid and Hazardous Waste responded to the comments by explaining that, in most cases, the siting and design of a Class IV Landfill requires little or no engineering. Therefore, unless the Executive Secretary determines the need, on a site

specific basis, plans and drawings signed by a professional engineer are unnecessary for a Class IV Landfill permit application. This change may allow the owners or operators of the majority of Class IV Landfills in Utah to design, permit, construct, and operate the landfill with out incurring the expense of hiring a professional engineer. One commenter supported the deletion of the requirement to discuss the relationship of a proposed solid waste disposal facility to the county solid waste management plan in the permit application.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. Rule R315-310 should be continued since it specifies the information that must be contained in an application for a permit to construct and operate any solid waste disposal facility. Also, the rule must be continued for the State to retain its U.S. Environmental Protection Agency (EPA) approved status.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/20/98



**Environmental Quality, Solid and
Hazardous Waste
R315-311
Permit Approval for Solid Waste
Disposal, Energy Recovery, and
Incinerator Facilities**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION
DAR FILE No.: 21003
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NOTICE AND STATEMENT OF CONTINUATION
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE

PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the siting, design, and operation of landfills (40 CFR 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-311 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has been changed once since its effective date to include applicable changes that have been made in the "Utah Solid and Hazardous Waste Act" and/or promulgated by EPA, or to clarify portions of the rule. One comment has been received during the rulemaking process to make changes in the rule. The comment that was received supported the changes made in the rule that clarified the procedure for the initiation of a permit modification; clarified the procedures for the termination a permit; and clearly differentiated between major and minor permit modifications.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule. Rule R315-311 should be continued since it specifies the procedures followed in the review of solid waste disposal permit application and the issuance of the permit; procedures for modifying or terminating permits; and specifies the requirements and procedures of a public comment period. Also, the rule must be continued for the State to retain its U.S. Environmental Protection Agency (EPA) approved status.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880

Salt Lake City, UT 84114-4880, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO: Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/20/98

Environmental Quality, Solid and Hazardous Waste R315-312 Recycling and Composting Facility Standards

FIVE-YEAR REVIEW NOTICE OF CONTINUATION DAR FILE NO.: 21004 FILED: 04/20/98, 11:01 RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-312 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has been changed once since its effective date to clarify portions of the rule. No comments have been received on the rule since its effective date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments

were received that opposed the rule. For the protection of human health and the environment, Rule R315-312 should be continued since it specifies minimum standards for the siting and operation of recycling facilities; it specifies minimum standards for the siting and operation of composting facilities and minimum standards for the finished compost; and it specifies minimum standards for the use of organic sludges on land for their soil conditioning or fertilizer value.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality Solid and Hazardous Waste Cannon Health Building 288 North 1460 West PO Box 144880 Salt Lake City, UT 84114-4880, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO: Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/20/98

Environmental Quality, Solid and Hazardous Waste R315-313 Transfer Stations and Drop Box Facilities

FIVE-YEAR REVIEW NOTICE OF CONTINUATION DAR FILE NO.: 21020 FILED: 04/28/98, 10:59 RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection

19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-313 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has not been changed and no comments have been received on the rule since its effective date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule. For the protection of human health and the environment, Rule R315-313 should be continued since it specifies minimum standards for siting and operating solid waste transfer stations and drop box facilities.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/28/98



**Environmental Quality, Solid and
Hazardous Waste
R315-314
Facility Standards for Piles Used for
Storage and Treatment**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21021
FILED: 04/28/98, 10:59
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE

PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-314 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has been changed twice since its effective date to clarify certain portions of the rule. Some comments were received during the rulemaking process to make the changes in the rule. Comments were received which supported the change to make the rule applicable to solid waste that is stored or treated in piles, other than garbage, after being in place for 90 days and applicable to piles containing garbage after it has been in place for 7 days. Also, one commenter suggested that the length of time waste may be stored in piles should be limited to six months instead of one year. The Division of Solid and Hazardous Waste responded to the commenter by explaining that some of the smaller recyclers and smaller landfills may be unable to collect enough of certain recyclable materials in six months to be efficiently and cost effectively recycled.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule. For the protection of human health and the environment, Rule R315-314 should be continued since it specifies minimum standards for the storage or treatment of waste, including waste tires, in piles.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/28/98

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**Environmental Quality, Solid and
Hazardous Waste
R315-315
Special Waste Requirements**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21022
FILED: 04/28/98, 10:59
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval. The U.S. Environmental Protection Agency (EPA) promulgated rules which became effective on October 9, 1993, that established minimum national standards for the siting, design, and operation of landfills (40 CFR 257 and 258). By promulgating rules that meet the minimum EPA standards, a state may become an EPA Approved State and have primacy in the operation and enforcement of the solid waste program. Also, an approved state is allowed increased flexibility in many areas of the program. Utah became an approved state on October 8, 1993.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-315 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has been changed since its effective date to include applicable changes that have been made in the "Utah Solid and Hazardous Waste Act" and/or promulgated by EPA, or to clarify portions of the rule. Comment have been received during the rulemaking process to make changes in the rule. A proposed change to the rule would have classified waste asphalt as a special waste and would have required the generator of the waste asphalt to complete chemical analysis of the asphalt. Several management options for waste asphalt were proposed in the rule and the results of the analysis would have determined

the management option used. Several comments were received that were opposed to this change because of the added expense and complexity of following the proposed procedure. Due to the comments received, the Division of Solid and Hazardous Waste withdrew the proposed change. Another comment was received that supported the change in the rule that mirrored the EPA requirements for the handling and disposing of asbestos waste.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments were received that opposed the rule as a whole. Rule R315-315 should be continued since it specifies the requirements for handling and disposing of special wastes (asbestos; ash; bulky wastes such as car bodies, furniture, and appliances; sludge; and dead animals) for the protection of human health and the environment. Also, the rule must be continued for the State to retain its U.S. Environmental Protection Agency (EPA) approved status.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/28/98

◆ ————— ◆

**Environmental Quality, Solid and
Hazardous Waste
R315-316
Infectious Waste Requirements**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21023
FILED: 04/28/98, 10:59
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and

gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-316 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has not been changed and no comments have been received on the rule since its effective date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments have been received that oppose the rule. For the protection of human health and the environment, Rule R315-316 should be continued since it specifies minimum standards for the storage, transport, and disposal of infectious waste.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/28/98



**Environmental Quality, Solid and
Hazardous Waste
R315-317
Other Processes, Variances, and
Violations**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 21024
FILED: 04/28/98, 10:59
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-317 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has not been changed and no comments have been received on the rule since its effective date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments have been received that oppose the rule. Rule R315-317 should be continued since it provides owners or operators of solid waste facilities the opportunity to receive a variance from some requirements or to use alternative processes, methods, or equipment and specifies the conditions under which these may be approved by the Executive Secretary. The rule also specifies the action that the Executive Secretary may take against the owner or operator of a solid waste facility that is in violation of an approved plan of operation or permit and allows the owner or operator to request a hearing before the Solid and Hazardous Waste Control Board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/28/98



**Environmental Quality, Solid and
Hazardous Waste
R315-318
Permit by Rule**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21025
FILED: 04/28/98, 10:59
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Utah Solid and Hazardous Waste Act," Title 19, Chapter 6, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Board is to require all solid waste disposal facilities to submit plans, prior to construction, for review to determine if requirements of the Act and the rules will be met (Subsection 19-6-104(1)(j)). Also, Subsection 19-6-108(9) specifies the general contents of the Plan of Operation that must be submitted to the Board by all solid waste facilities for approval.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-318 was promulgated by the Utah Solid and Hazardous Waste Control Board and became effective on July 15, 1993. The rule has not been changed and no comments have been received on the rule since its effective date.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments have been received that oppose the rule. Rule R315-318 should be continued since it provides a permit by rule for owners or operators of certain waste disposal facilities that are regulated by other Federal or state agencies which have rules as stringent as or more stringent than the "Utah Solid Waste Permitting and Management Rules." This eliminates

the need to have some facilities regulated by more than one governmental agency.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carl E. Wadsworth at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at eqshw.cwadswor@state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Executive Secretary

EFFECTIVE: 04/28/98



**Natural Resources; Oil, Gas and
Mining Board
R641-100
General Provisions**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21041
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple

PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801)
538-5316, by FAX at (801) 359-3940, or Internet E-mail at
nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals
Research

EFFECTIVE: 05/01/98

Natural Resources; Oil, Gas and
Mining Board
R641-101
Parties

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 21042
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY
PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE
PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is
authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT
OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR
OPPOSING THE RULE: No comments have been received from
persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE,
INCLUDING REASONS WHY THE AGENCY DISAGREES WITH
COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is
sought to be continued so that the existing rules for practice
and procedure for proceedings before the Board of Oil, Gas
and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING
REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801)
538-5316, by FAX at (801) 359-3940, or Internet E-mail at
nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals
Research

EFFECTIVE: 05/01/98

Natural Resources; Oil, Gas and
Mining Board

R641-102

Appearances and Representations

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 21043
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY
PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE
PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is
authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT
OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR
OPPOSING THE RULE: No comments have been received from
persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE,
INCLUDING REASONS WHY THE AGENCY DISAGREES WITH
COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is
sought to be continued so that the existing rules for practice
and procedure for proceedings before the Board of Oil, Gas
and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING
REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801)
538-5316, by FAX at (801) 359-3940, or Internet E-mail at
nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals
Research

EFFECTIVE: 05/01/98

Natural Resources; Oil, Gas and Mining Board
R641-103
Intervention

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 21044
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board
R641-104
Pleadings

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 21045
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board
R641-105
Filing and Service

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 21046
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at rrdomain.rdaniele@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board

R641-106

Notice and Service

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21047
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at rrdomain.rdaniele@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board

R641-107

Prehearing Conference

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21048
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice

and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98

Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board
R641-109
Decisions and Orders

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21050
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

Natural Resources; Oil, Gas and Mining Board
R641-108
Conduct of Hearings

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21049
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board
R641-110
Rehearing and Modification of Existing Orders

FIVE-YEAR REVIEW NOTICE OF CONTINUATION
DAR FILE No.: 21051
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board
R641-111
Declaratory Rulings

FIVE-YEAR REVIEW NOTICE OF CONTINUATION
DAR FILE No.: 21052
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

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THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board
R641-112
Rulemaking

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

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REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board
R641-113
Hearing Examiners

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board
R641-114
Exhaustion of Administrative Remedies

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 21055
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at rrdomain.rdaniele@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board

R641-115

Deadline for Judicial Review

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21056
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at rrdomain.rdaniele@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board

R641-116

Judicial Review of Formal Adjudicative Proceedings

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21057
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is

sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdaniels@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98

Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at nrdomain.rdaniels@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



**Natural Resources; Oil, Gas and
Mining Board
R641-118
Waivers**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 21059
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

**Natural Resources; Oil, Gas and
Mining Board
R641-117
Civil Enforcement**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 21058
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at rdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Natural Resources; Oil, Gas and Mining Board
R641-119
Severability

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21060
FILED: 05/01/98, 09:52
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5, 40-8-6, and 40-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Oil, Gas and Mining Board
Ste. 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at rdomain.rdanields@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 05/01/98



Public Safety, Highway Patrol
R714-110
Permit to Operate a Motor Vehicle in Violation of Equipment Laws

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 21075
FILED: 05/01/98, 12:06
RECEIVED BY: MB

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 41-6-117 through 41-6-175.5 address the equipment requirements for motor vehicles in Utah. Section 41-6-117.5 allows the Department of Public Safety to issue permits which will allow motor vehicles to be operated in violation of those requirements. Subsection 53-8-204(5)(a) authorizes the department to write rules regarding the operation of motor vehicle equipment.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule in order to advise the public how they may apply for a permit to operate a motor vehicle in violation of motor vehicle equipment laws, how the department responds to such applications, and how a person may appeal a denial of such application.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Public Safety
Highway Patrol
First Floor, Calvin L. Rampton Building
4501 South 2700 West
Box 141100
Salt Lake City, UT 84114-1100, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
J. Francis Valerga at the above address, by phone at (801) 965-4463, by FAX at (801) 965-4608, or Internet E-mail at psdomain.psmain.jfvalerg@email.state.ut.us.

AUTHORIZED BY: Richard A. Greenwood, Colonel

EFFECTIVE: 05/01/98



NOTICES OF EXPIRED RULES

Statute provides that "every [administrative] rule that is in effect on January 1 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature during its annual general session." In addition, "the [Legislature's] Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session." The form of the legislation is a statement that all administrative rules are reauthorized, followed by an exception list of rules that are not.

The rules listed below were not reauthorized by the "Reauthorization of Administrative Rules" bill considered by the legislature during its last General Session. They expired on May 1, 1998.

The expiration of administrative rules that are not reauthorized by the Legislature is governed by UTAH CODE Section 63-46a-11.5 (1989). The Administrative Rules Review Committee is created by Section 63-46a-11 (1997).

Human Services

Administration, Administrative Services, Licensing.

DAR No. 21039: R501-15. Utah Social Services Delivery System Data Bases Screening.

Expired: 05/01/98

1998 UTAH LAWS 62 (S.B. 85)

Public Safety

Highway Patrol

DAR No. 21040: R714-205. Vehicle Window Tinting.

Expired: 05/01/98

1998 UTAH LAWS 62 (S.B. 85)

End of Expired Rules Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing
No. 20894 (AMD): R156-15-302d. Qualifications for Licensure - Examination Requirements.
Published: April 1, 1998
Effective: May 5, 1998

No. 20878 (AMD): R156-37. Controlled Substance Act Rules of the Division of Occupational and Professional Licensing.
Published: April 1, 1998
Effective: May 4, 1998

No. 20883 (AMD): R156-56-302. Licensure of Inspectors.
Published: April 1, 1998
Effective: May 4, 1998

No. 20651 (CPR): R156-59. Employee Leasing Company Act Rules.
Published: April 1, 1998
Effective: May 4, 1998

Real Estate

No. 20798 (AMD): R162-1. Authority and Definitions.
Published: March 15, 1998
Effective: April 23, 1998

No. 20799 (AMD): R162-2. Exam and License Application Requirements.
Published: March 15, 1998
Effective: April 23, 1998

No. 20800 (AMD): R162-3. License Status Change.
Published: March 15, 1998
Effective: April 23, 1998

No. 20801 (AMD): R162-4. Office Procedures - Real Estate Principal Brokerage.
Published: March 15, 1998
Effective: April 23, 1998

No. 20802 (AMD): R162-5. Property Management.
Published: March 15, 1998
Effective: April 23, 1998

No. 20803 (AMD): R162-6. Licensee Conduct.
Published: March 15, 1998
Effective: April 23, 1998

No. 20804 (AMD): R162-7. Enforcement.
Published: March 15, 1998
Effective: April 23, 1998

No. 20805 (AMD): R162-10. Administrative Procedures.
Published: March 15, 1998
Effective: April 23, 1998

Environmental Quality

Air Quality
No. 20736 (AMD): R307-1-1. Foreword and Definitions.
Published: March 1, 1998
Effective: April 22, 1998

No. 20771 (AMD): R307-8. Oxygenated Gasoline Program.
Published: March 1, 1998
Effective: April 22, 1998

Financial Institutions

Administration
No. 20879 (AMD): R331-22. Rule Governing Reimbursement of Financial Institutions for Production of Records.
Published: April 1, 1998
Effective: May 4, 1998

Human Services

Administration, Administrative Services, Management Services
No. 20896 (REP): R503-5. Client Notice and Client Hearings.
Published: April 1, 1998
Effective: May 2, 1998

Insurance

Administration
No. 20815 (AMD): R590-79-4. Definitions.
Published: March 15, 1998
Effective: May 1, 1998

No. 20826 (AMD): R590-141. Licensing Rule.
 Published: March 15, 1998
 Effective: May 1, 1998

Labor Commission

Occupational Safety and Health
 No. 20835 (AMD): R614-1-4. Incorporation of Federal Standards.
 Published: April 1, 1998
 Effective: May 4, 1998

Public Safety

Highway Patrol
 No. 20906 (R&R): R714-158. Vehicle Safety Inspection Rule.
 Published: April 1, 1998
 Effective: May 5, 1998

No. 20840 (REP): R714-159. Utah Street Rod Rule.
 Published: April 1, 1998
 Effective: May 5, 1998

No. 20907 (R&R): R714-200. Department Standards for Lights and Illumination Devices on Vehicles.
 Published: April 1, 1998
 Effective: May 5, 1998

No. 20908 (R&R): R714-210. Air Conditioning Equipment - Requirements.
 Published: April 1, 1998
 Effective: May 5, 1998

No. 20909 (R&R): R714-220. Standards for Protective Headgear.
 Published: April 1, 1998
 Effective: May 5, 1998

No. 20910 (R&R): R714-230. Standards and Specifications for Seat Belts.
 Published: April 1, 1998
 Effective: May 5, 1998

No. 20911 (R&R): R714-240. Standards and Specifications for Child Restraint Devices.
 Published: April 1, 1998
 Effective: May 5, 1998

No. 20912 (R&R): R714-300. Brake Equipment Requirements.
 Published: April 1, 1998
 Effective: May 5, 1998

Tax Commission

Administration
 No. 20818 (AMD): R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4.
 Published: March 15, 1998
 Effective: May 4, 1998

No. 20819 (AMD): R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.1, 63-46b-8, and 63-46b-10.
 Published: March 15, 1998
 Effective: May 4, 1998

No. 20820 (AMD): R861-1A-25. Informal Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-5.
 Published: March 15, 1998
 Effective: May 4, 1998

No. 20821 (AMD): R861-1A-26. Procedures for Formal and Informal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, 63-46b-5 and 63-46b-6 through 53-46b-11.
 Published: March 15, 1998
 Effective: May 4, 1998

No. 20822 (AMD): R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63-46b-7.
 Published: March 15, 1998
 Effective: May 4, 1998

No. 20823 (AMD): R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8.
 Published: March 15, 1998
 Effective: May 4, 1998

No. 20824 (AMD): R861-1A-32. Mediation Process Pursuant to Utah Code Section 63-46b-1.
 Published: March 15, 1998
 Effective: May 4, 1998

Auditing

No. 20828 (AMD): R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairman of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.
 Published: March 15, 1998
 Effective: May 4, 1998

Property Tax

No. 20897 (AMD): R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.
 Published: April 1, 1998
 Effective: May 4, 1998

Transportation

Motor Carrier

No. 20827 (AMD): R909-1. Safety Regulations for Motor Carriers.
 Published: March 15, 1998
 Effective: May 1, 1998

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all changes to Utah's administrative rules from January 2, 1998, to the present (current as of May 7, 1998). The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: Because of space constraints, the Keyword Index is not included in this *Bulletin*.

NOTE: A copy of the indexes is available for public inspection at the Division of Administrative Rules. The indexes may also be obtained by calling UtahBBS, the State of Utah's Bulletin Board System, at (801) 538-3383. A computer, a modem, and a communications software package are required to access UtahBBS. Set communications software to 8 data bits, no parity, and 1 stop bit. The indexes are located under the "Administrative Rules Conference" (conference 9), in the "Indexes--Current" option (7).

UtahBBS may also be accessed over the Internet with a telnet client (the client must support download capabilities if downloading information is desired), or with a World Wide Web client (such as Mosaic or Netscape). The telnet address is [bbs.state.ut.us](telnet://bbs.state.ut.us); the web address is <http://web.state.ut.us/its/bbs.htm>.

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-2	Access to Records	20537	NSC	01/06/98	Not Printed
R13-3	American With Disabilities Act Grievance Procedures	20631	5YR	01/08/98	98-3/89
<u>Facilities Construction and Management</u>					
R23-4	Suspension/Debarment From Consideration for Award of State Contracts	20702	5YR	01/28/98	98-4/128
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R590-132	Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection	18730	CPR (First)	see Second CPR	97-15/102
R590-132	Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection	18730	CPR (Second)	03/01/98	97-22/105
R590-132-3	Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection	20590	NSC	03/01/98	Not Printed
R590-141	Licensing Rule	20826	AMD	05/01/98	98-6/42
R590-155	Disclosure of Life and Disability Guaranty Association Limitations	20943	5YR	03/27/98	98-8/63
R590-157	Taxation of Surplus Lines Insurance Premiums	20944	5YR	03/27/98	98-8/64
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R641-100	General Provisions	21041	5YR	05/01/98	98-10/158
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R641-107	Prehearing Conference	21048	5YR	05/01/98	98-10/161
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R671-301	Personal Appearance	20443	AMD	02/18/98	98-1/79
R671-302	News Media and Public Access to Hearings	20445	AMD	02/18/98	98-1/80
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PUBLIC SAFETY

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R986-307	Eligibility Determination and Redetermination	20774	AMD	04/01/98	98-5/58
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